In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-848

UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL., APPELLANTS

v.

LULA MAE MURRY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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DOCKET ENTRIES

No. 1412-72 in the United States District Court for the District of Columbia.

Date	Proceedings
1972	Deposit for cost by
July 17	Complaint, appearance 9 Affidavits. filed
July 17	Summons, copies (6) and copies (6) of Complaint issued #1, #2, #3 & #4 serv. 7-18.; Atty. Gen. Serv. 7-18 DA serv. 7-18.
July 17	Motion for a temporary restraining order.
July 17	Motion for Preliminary injunction: P & A's.
July 17	Motion for a class action order.
July 17	Application for three-judge court.
July 18	Order requesting the Chief Judge of the USCA to promptly convene A Three Judge District Court. (N) Gesell J.
July 19	Motion for Temporary Restraining Order heard & taken under advisement. Gesell J.
July 20	Affidavit of Edward J. Heckman.
July 20	Order setting hearing on motion for a preliminary injunction & Deft' proposed motion to dismiss before 3-Judge Court on 7-31-72 at 2:00 P.M.; Denying motion for TRO; Directing defts to file their motion to dismiss and supporting papers by noon on 7-28-72. (N) Gesell, J.
July 21	Designation of the Honorable Roger Robb, U.S.-C.A. and the Honorable George L. Hart, Jr. U.S.D.C. to serve with the Honorable Gerhard A. Gesell, U.S.D.C. as members of a three judge panel to hear and determine this case. (Notices sent by Miss Brown) Wright, Acting Chief Judge, U.S.C.A.
July 61	Motion for preliminary injunction & defendants motion to dismiss heard & taken under advisement. Robb J., Hart J., Gesell J.
July 31	Motion of defendants to dismiss or in the alternative for summary judgment; opposition to plaintiffs motion for a preliminary injunction; affidavit statement; P & A; c/m 7-31. M.C.

Date	Proceedings
1972	
July 31	Motion of plaintiffs for summary judgment; supplemental affidavit of Pearl R. Beavert; supplemental memorandum of law; appendix A and B; c/s 7-31. M.C.
Aug. 7	Supplemental memorandum of defendants in support of their motion to dismiss or in the alternative for summary judgment and in opposition to plaintiffs request for preliminary injunction; c/m 8-7.
Aug. 14	Per Curiam Memorandum and Final Order that the "tax dependent" amendment to the Food Stamp Act Violates the 5th Amendment and its further enforcement and implementation by defendants is permanently enjoined. (N) Robb, J., Hart, J., Gesell J.
Aug. 31	Supplemental memorandum of plaintiffs in support of motion for summary judgment; c/s 8-29.
Sep. 12	Notice of appeal by defts from order of 8-14-72 to the Supreme Court copy mailed to all counsel of record.
	No. 72-848 in the United States Supreme Court
1972	
Nov. 2	Order extending the time for Docketing the appeal.
Dec. 8	Jurisdictional Statement filed
1973	
Jan. 6	Motion to Affirm filed
Feb. 20	Order Noting Probable Jurisdiction

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed July 17, 1972]

LULA MAE MURRY (residing at 118 Tenth Street; Bessemer, Alabama); NANCY MARIE LEE (residing at 1712 Locust Street; Decatur, Alabama); VICTORIA ALDERETE (residing at 302 St. Louis Street; San Antonio, Texas); PEARL R. BEAVERT (residing at 2008 8th Avenue North; Seattle, Washington); JOE BEN VALDEZ and ISABEL VALDEZ (residing at 114 E. 6th Street; Pueblo, Colorado); ROBERT A. BRODERSON (residing at Rural Route 1, Box 306; Peahi, Maui, Hawaii); and LEONILA NEVAREZ (residing at 626 Briggs Avenue; San Antonio, Texas); for themselves, their households, and all other persons similarly situated,

PLAINTIFFS,

—VS.—

THE UNITED STATES DEPARTMENT OF AGRICULTURE; EARL L. BUTZ, individually and in his capacity as Secretary of the United States Department of Agriculture; EDWARD J. HEKMAN, individually and in his capacity as Administrator of the Agriculture Department's Food and Nutrition Service; JAMES KOCHER, individually and in his capacity as Food Stamp Division Director of the Agriculture Department's Food and Nutrition Service,

DEFENDANTS.

Civil Action No. .....

Complaint for Declaratory and Injunctive Relief

Application for Three-Judge Court

I. INTRODUCTION

1. This civil action for declaratory and injunctive relief is brought because the plaintiffs seek to enjoin implementation of the "tax dependent" provision in the Food Stamp Act [7 U.S.C. § 2014(b), as amended by P.L. 91-671 (Jan.

11, 1971) and the regulations promulgated thereunder [7 C.F.R. § 271.3(d), as published in 36 Fed. Reg. 14108 (July 29, 1971)]. Although plaintiffs are impoverished persons with insufficient resources to purchase a nutritionally adequate diet, they are denied Federal food stamps solely because of the "tax dependent" provisions in the Food Stamp Act and regulations. Those provisions deny food stamps to all needy persons and families who reside in households in which at least one member, 18 years of age or older, has been claimed as a "dependent" for Federal income tax purposes by a taxpayer who is not a member of a household eligible for food stamps. The former household is ineligible for food stamp participation during the tax period such dependency is claimed and for a period of one year after expiration of the tax period.

2. The Food Stamp Act [7 U.S.C. §§ 2011 *et seq.*] was passed by Congress in 1964, and amended in 1971 [P.L. 91-671], to provide direct relief against conditions of undernutrition and hunger existing throughout the country. The Act's Declaration of Policy sets forth the purposes of the Program:

> It is hereby declared to be the policy of Congress, in order to promote the general welfare, that the Nation's abundance of food should be utilized cooperatively by the States, the Federal Government, local governmental units, and other agencies to safeguard the health and well-being of the Nation's population and raise levels of nutrition among low-income households. The Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. The Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of our agricultural abundances and will strengthen our agricultural economy, as well as result in more orderly marketing and distribution of food. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to purchase a nutritionally adequate diet through normal channels of trade. [7 U.S.C. § 2011]

3. The operation of the Food Stamp Program is fairly simple: a poverty-stricken household is charged a certain amount of money and in exchange receives food stamps of greater value. The difference between the value of the stamps received—the "coupon allotment"—and the cost of the stamps, is a bonus which provides recipients with a direct increase in food purchasing power. The stamps may be used to purchase domestic food, other than liquor and tobacco, at grocery stores certified by the Agriculture Department to sell food for stamps. Participation in the Program is limited to impoverished households [7 U.S.C. § 2014(a)] and such eligible households are entitled to sufficient stamps so that they can obtain a "nutritionally adequate diet." [7 U.S.C. §§ 2011 and 2016(a)]

4. Prior to the 1971 amendments to the Food Stamp Act, impoverished households were deemed eligible for food assistance solely on the basis that they had low income and few resources. The 1971 amendments to the Food Stamp Act, *inter alia,* deny health-vital food aid to *all members of a household*—regardless of how poor, hungry or malnourished they are—if one or more members of the household was declared a "tax dependent" by a person residing in another household if that other household is not receiving food stamps. The impoverished household containing the "tax dependent" is ineligible for food stamps during the period of the tax dependency and one year thereafter.

5. The tax dependency provision was apparently enacted by Congress in order to deny food stamp aid to persons, particularly college students, who supposedly had ready access to adequate income. But the effect of this overly-broad sweeping provision is to deny essential food relief to all members of an impoverished household in which a "tax dependent" resides even if:

(a) the taxpayer made a fraudulent tax dependency claim; or

(b) no support was actually given by the taxpayer to the "tax dependent"; or

(c) the taxpayer, while being ineligible for food assistance, is so poor that he cannot contribute a meaningful amount to the indigent "tax dependent"; or

(d) the taxpayer is presently unable or unwilling to contribute to the "tax dependent" and made a tax dependency claim for a period ending within the past year; or

(e) the taxpayer indicated to the Internal Revenue Service and the Food Stamp Office that he is not making a tax dependency declaration this year, but he made such a declaration in the previous year; or

(f) members of the household in which the "tax dependent" resides receive absolutely no benefit from the contributions by the taxpayer (either because the contributions are made specifically and solely to the "tax dependent"—such as child support or alimony payments—or because the contributions to the "tax dependent" are so small that they cannot be apportioned to other household members).

6. As a result of the amended statute and regulations, the plaintiffs—who are poor and otherwise eligible for food stamps, but who have been declared "dependents" during the present or prior year, or who live in a household containing such "dependents"—will be unable to participate in the Food Stamp Program. They, like many thousands of other indigents, will be excluded from health-vital food aid solely because they, or one or more of the people living with them, have been written off as a "tax dependent." The plaintiffs are poor and without access to nutritional adequacy, and are therefore much in need of food stamp assistance.

7. The tax dependency provisions in the statute and regulations are unconstitutional for the following reasons:

(a) they establish a conclusive and irrebutable presumption that plaintiffs and their households are neither poor nor in need of food assistance, thereby violating plaintiffs' rights to due process of law as guaranteed by the Fifth Amendment to the United States Constitution. Under the statute, plaintiffs have no right to adduce evidence that the tax dependency declaration was fraudulent; or that no support was actually provided by the taxpayer; or that the contribution given by the taxpayer was insubstantial; or that the taxpayer is presently unwilling or unable to contribute to the "tax dependent" (even though contributions were made previously); or that the taxpayer has informed the Internal Revenue Service and Food Stamp office that he will not make a tax dependency declaration this year; or that, as members of a household in which a "tax dependent" resides, they receive no contribution from the taxpayer (even though the "tax dependent" does). By

conclusively presuming, without permitting any rebuttal evidence, that "tax dependent" households have sufficient resources to purchase "a nutritionally adequate diet" [7 U.S.C. §§ 2011 and 2016(a)], thereby denying them health-vital food stamps, the statute and regulations violate plaintiffs' rights to due process of law;

(b) they violates plaintiffs' rights to equal protection since the statute and regulations create two different classes —(1) needy persons who reside in households that do not contain individuals, 18 years or older, who were claimed as "tax dependents" within the past year by a taxpayer ineligible for food stamps, and (2) needy persons who reside in households containing at least one member, 18 years or older, who was claimed as a "tax dependent" within the past year by a taxpayer ineligible for food stamps—and discriminate against the latter class in the provision of health-vital food aid without any rational justification therefor, thereby violating the Fifth Amendment to the United States Constitution; and

(c) they violate plaintiffs' rights to equal protection since the discriminatory deprivation of food assistance impinges upon three fundamental constitutional rights without there being a "compelling governmental interest" to justify said discrimination. Plaintiffs' fundamental rights that are impinged by the discriminatory deprivation of food assistance include:

(i) the right to due process (guaranteed by the Fifth Amendment), insofar as the statute wrongfully, but conclusively and irrebutably, presumes that plaintiffs have access to nutritional adequacy, thereby preventing plaintiffs from adducing facts to the contrary;

(ii) the right to freedom of association (guaranteed by the First and Ninth Amendments), insofar as the statute penalizes the plaintiffs—by taking away their food stamp entitlements—if they live with a "tax dependent," and insofar as it penalizes the plaintiffs if they live in any households other than the one in which the taxpayer resides; and

(iii) the right to travel and settle, because the statute penalizes the plaintiffs if they live in any household other than the one in which the taxpayer resides.

By impinging upon these fundamental rights without

there being a "compelling governmental interest" therefor, the discriminatory deprivation of food assistance violates the Fifth Amendment to the United States Constitution.

II. Jurisdiction

8. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1332, 1337, 1361; and 5 U.S.C. § 702 (the Administrative Procedure Act). The amount in controversy, exclusive of interest and costs, exceeds $10,000. A declaration of plaintiffs' rights is sought pursuant to 28 U.S.C. §§ 2201 and 2202.

III. Three-Judge Court

9. This is a proper case for determination by a three-judge Court pursuant to 28 U.S.C. §§ 2282 and 2284, since plaintiffs seek an injunction to restrain defendants, who are Federal officials, from the enforcement, operation and execution of a Federal statute and a Federal regulation on the grounds that said statute and regulation are contrary to the Constitution of the United States.

IV. Plaintiffs

10. All of the plaintiffs are poor and fall within the national income eligibility standards set by the Agriculture Department for Food Stamp Program participation. [See 37 Fed. Reg. 1159 (Jan 26, 1972)] The plaintiffs are from seven different cities in six states. They reside in: Bessemer and Decatur, Alabama; Seattle, Washington; Pueblo, Colorado; Waterloo, Iowa; Peahi, Maui, Hawaii; and San Antonio, Texas. Despite plaintiffs' vulnerable nutritional status, and although they were previously eligible for Federal food assistance, they have been denied food stamp eligibility solely because their households contain persons who have been claimed as "tax dependents" within the past year by taxpayers who are ineligible for food stamp assistance.

A. The MURRY Household

11. Plaintiff LULA MAE MURRY is 50 years old. She resides at 118 Tenth Street in Bessemer, Alabama with two of her sons, Jordan Murry (19 years old) and David Murry (15 years old), and her two grandchildren, Sammy Lee

Murry (18 years old) and Alfred James (8 years old). The four boys all attend school. Plaintiff's entire income consists of $15 every two weeks plus payment of her monthly rent ($25). These funds come from her ex-husband as court-ordered child support for her sons. Hence, plaintiff's present income is $57.50 per month. Plaintiff has applied for public assistance through the Alabama Pensions and Security Department and has received notification indicating that such aid will soon be provided.

12. Plaintiff MURRY's monthly expenses include the following recurring items: $18.50 for gas and electricity; $17 for doctor's visits and pills for her nervous condition; $2 for transportation to the doctor's office; and $3 for laundry. In addition, plaintiff MURRY has to pay for her (grand)children's school supplies, clothing, and hygienic needs (e.g. tooth paste, soap, shaving implements, etc.). But the largest expenditures that plaintiff MURRY makes are the food costs for herself and her four growing boys. For the past seven years, she has been dependent on food stamps to meet her household's nutritional needs. She has received $128 in food stamps at a cost of only $11—thereby receiving $117 in food benefits, a sum that is over 200 percent of her total monthly income. Food stamp assistance has been the only means by which plaintiff MURRY has been able to provide her household with food.

13. Since April, 1972, Plaintiff MURRY has been denied food stamp relief. She was informed by the Alabama Department of Pensions and Security that this aid was no longer available because of the "new tax dependency" provision in the Food Stamp Act. Plaintiff's ex-husband, Lazrous Murry, who is ineligible for food stamps, had claimed her two sons and her grandson, Sammy Lee, as "tax dependents" on his 1971 Income Tax Returns. Since plaintiff's oldest son Jordon is 19 years old, and grandson Sammy Lee is 18 years old, the "tax dependent" rule applies.

14. Plaintiff MURRY has been divorced from Lazrous Murry for almost eleven years. Mr. Murry is 55 years old. He has not shared the same household with the plaintiff and her sons since their divorce. Mr. Murry has remarried and now lives with, and supports, his second wife and her two children, whom he has adopted. They reside in Bessemer, Alabama. Mr. Murry is employed by the Tennessee

Coal Iron and Railroad Company. Plaintiff MURRY does not know how much her husband earns monthly. The only support she receives from him is the aforementioned court-ordered child support of $15 every two weeks and payment of her monthly rent ($25).

15. Plaintiff MURRY currently has no means available to replace the vital food assistance she received through the Food Stamp Program. Her alternatives are unconscionably cruel: she must either force her oldest son and grandson to leave the home, or she must do without sufficient nourishment for herself and her children. Since she has kept her (grand)children together and continues to provide them with parental care and support, she has been denied food stamps for the first time in seven years, thereby leaving plaintiff MURRY's family undernourished and hungry.

B. The LEE Household

16. Plaintiff NANCY MARIE LEE is 39 years old. She resides at 1712 Locust Street in Decatur, Alabama with her five children: James Whitener (20 years old); Ricky Joe Whitener (18 years old); Trease Fay Whitener (17 years old); Cynthia Ann Lee (12 years old); and Charles Lee (10 years old). The entire monthly income for the household is $23 which plaintiff LEE receives for one of her children from the Alabama Pension and Security Department's Aid to Dependent Children Program. Plaintiff LEE has applied for additional funds and expects to receive modest monthly supplements in the near future. Plaintiff's monthly household expenditures total $249, including: $148 for food; $13 for rent; $8 for electricity and utilities; $20 for clothing; $20 for medicine; $15 for transportation; and $25 for personal incidentals, household goods and hygienic items.

17. Because of her desperate financial situation, plaintiff LEE has been unable to provide her large family with even a minimal food diet. Should her monthly public assistance payments increase as anticipated, she still could only afford a small fraction of her family's nutritional needs. To remedy this situation, plaintiff LEE applied for food stamp assistance. Based on her family's income, even after she receives the modest increase in public assistance, she is eligible for $148 worth of stamps at a cost of $14, thereby providing $134 each month in important food benefits.

However, plaintiff LEE was denied food stamps solely because her husband had claimed her two oldest sons as "tax dependents" in his 1971 tax returns. Thus, because of the "tax dependent" rule, plaintiff LEE's household has been denied food stamps.

18. Plaintiff LEE's husband, Charles S. Lee, is not a member of her household. He deserted his family several months ago. Since the time of his desertion, he has not provided his family with support. Plaintiff LEE is unaware of her husband's whereabouts and has no information as to whether or not he is employed. However, due to her husband's tax dependency claim in his 1971 tax returns, plaintiff LEE is left with the following dilemma: she can either force her oldest sons to leave the home, or she must do without adequate and sufficient nourishment for herself and her five children. She has rejected the first alternative partially because her oldest son suffers from mental retardation (and has spent substantial time in the Alabama Mental Institution in Tuscaloosa), and because her second oldest son needs constant attention since he has already had juvenile delinquency problems. Plaintiff LEE, therefore, decided not to force these boys away from their home and family. Consequently, the LEE household must suffer severe deprivation, hunger and undernutrition.

C. The ALDERETE Household

19. Plaintiff VICTORIA ALDERETE is 43 years of age and resides at 302 St. Louis Street in San Antonio, Texas, with her five children. Plaintiff ALDERETE has been divorced from her husband, Juan Alderete since January, 1968. Plaintiff's current monthly income totals $205 of which $105 is derived from child support payments and $100 is received as public assistance (Aid to Families with Dependent Children). Plaintiff's monthly household expenses include: $73 for house payments, $71 for food, $17 for utilities, $4 for school costs, $13 for clothing, $18 for laundry expenses, and $9 for hygenic items and recreational needs. Thus, plaintiff's household expenses total $205 monthly.

20. Plaintiff ALDERETE's household budget is a stringent one. However, in the past she was able to meet her family's needs because food stamps allowed her to keep her food expenses to a minimum. Plaintiff was able to

purchase $144 worth of food stamps monthly at a cost of $46, thereby receiving $98 in food aid, a sum equivalent to almost 50% of plaintiff's entire monthly income. With an additional expenditure of $25 each month to supplement her monthly food stamp purchases, plaintiff was able to feed her family. However, plaintiff has been informed by the Texas Department of Public Welfare that her household could no longer receive food stamp relief because her ex-husband, Juan Alderete, had claimed their children as dependents for Federal income tax purposes. Since plaintiff's oldest child, George, is eighteen years old, the ALDERETE household was subject to the tax dependency provision.

21. Plaintiff ALDERETE appealed this decision of the Texas Public Welfare Department at a fair hearing proceeding. In early July, she was informed that this denial of food stamps was upheld by the hearing officer because of the tax dependency provision. Plaintiff's household is, therefore, unable to receive food stamps because her ex-husband, who provides her household with only partial support, claimed her oldest son as a "tax dependent" in his 1971 Income Tax returns. Plaintiff can receive stamps once more, only if she is willing to force her oldest son to leave his family and home. However, plaintiff's family is closely knit. She will not drive her son from his brothers and sisters. Consequently, she is forced to deny her five children an adequately nutritious diet, thereby risking severe harm to the family's health and the children's development.

D. The BEAVERT Household

22. Plaintiff PEARL R. BEAVERT is the mother of two teenage children who reside with her at 2008 8th Avenue North in Seattle, Washington. Plaintiff BEAVERT is divorced. The total monthly income of the BEAVERT household is $224, which is derived entirely from the Aid to Dependent Children Program. The total recurring monthly expenditures for the household are $296, including: $102 in house payments; $69 in utilities; and $125 for food and household necessities. In addition to these expenses, plaintiff BEAVERT must spend money for transportation, clothing and toiletries.

23. Previously, the BEAVERT household received food stamp relief which it needed, and currently needs, for substantial nourishment. The household received $88 in monthly food stamps at a cost of $58, thereby obtaining a $30 benefit. On May 26, 1972, plaintiff BEAVERT was notified that her household's food stamp benefits would be terminated because her 18 year old daughter Crystal was claimed as a "tax dependent" by Crystal's father in his 1971 Federal income tax returns. Although the family receives no support from Crystal's father, the BEAVERT household has been denied food stamp relief solely because of the 1971 tax dependency claim. Since plaintiff BEAVERT feels morally bound to support and care for her daughter, and since Crystal is going to high school, plaintiff BEAVERT has not forced Crystal to leave her family and home. As a result, the entire household is denied Federal food stamp aid that they vitally need for obtaining nutritional adequacy.

E. The VALDEZ Household

24. Plaintiffs JOE BEN VALDEZ and ISABEL VALDEZ are both 18 years of age. They and their one month old child reside in Pueblo, Colorado. The household's total monthly income is $224 derived from public assistance benefits ($194) and payments from the Work Incentive Training Program ($30). The recurring monthly expenses are $237, including: $80 for rent; $4 for electricity; $82 for food; $10 for clothing; $8 for insurance; $45 for transportation (gas and automobile repairs); $6 for educational expenses; and $2 for recreation. These expenses have increased during the past weeks and will continue to increase due to the needs of plaintiffs' child.

25. Plaintiff JOE BEN VALDEZ applied for food stamp relief so that he could provide his household with a proper diet. Plaintiff's application was rejected because his father, Ben G. Valdez had claimed him as a "dependent" in the 1971 income tax returns. Plaintiffs JOE BEN VALDEZ and ISABEL VALDEZ, however, have not received any support from Ben G. Valdez in 1972, and they will not be receiving any support in the future. This is because Ben G. Valdez is very much in debt and his impoverished circum-

stances leaves him with insufficient funds for providing support to the plaintiffs.

26. Ben G. Valdez is 54 years old and resides in Pueblo, Colorado with his wife Rose Valdez (53 years of age), their two daughters—Nancy Martinez (21 years of age) and Joan Valdez (15 years of age)—and their son Daniel Valdez (17 years of age). Mr. Valdez earns $450 per month as an employee for the Colorado Fuel and Iron Corporation. Out of this income, Ben Valdez pays $497 in expenses, including: $180 for food; $39.50 for utilities; $20 for clothing; $23.88 for (life, automobile and fire) insurance; $22 for transportation; $20 for educational expenses; $3 for recreation; and $189 in monthly payments for debts incurred (which are cumulatively in the amount of $5,250).

27. Because of Ben G. Valdez's prohibitively high household expenses, he is unable to provide the plaintiffs with any support. Since Ben G. Valdez is barely able to support his wife and three children, and since Mr. Valdez has irregular additional expenses due to his ulcers and diabetes condition, plaintiffs JOE BEN VALDEZ and ISABEL VALDEZ receive no money from him. But, since Ben G. Valdez claimed plaintiff JOE BEN VALDEZ as a "tax dependent" in 1971, the plaintiffs are disqualified from food stamp relief. This has had, and will continue to have, a very adverse effect on plaintiffs' household, particularly the infant child who has insufficient food for the nourishment necessary to grow and develop healthfully.

F. The BRODERSON Household

28. Plaintiff ROBERT A. BRODERSON is 18 years of age. He and his wife, Beverly Broderson (16 years of age), reside at 309 East Ninth Street in Waterloo, Iowa. Plaintiff BRODERSON recently obtained a job at a service station which will provide the household with $110 in monthly income—the only income that the household receives. Out of this, plaintiff BRODERSON must pay $75 monthly for rent; additional expenditures, for other necessities, must also be paid. Since plaintiff BRODERSON's wife is pregnant and expects a child around July 10, 1972, substantial additional expenditures will have to be made by the household.

29. On or about March 8, 1972, plaintiff BRODERSON and his wife applied for food stamps. Despite the house-

hold's impoverished status the food stamp application was denied solely because plaintiff BRODERSON had been claimed as a "dependent" for income tax purposes by his parents for tax year 1971. Plaintiff BRODERSON and his wife were married on December 26, 1971 and resided as husband and wife with his parents from that time until February, 1972, at which time they established their own residence. Although plaintiff's parents provided ROBERT A. BRODERSON with support in 1971, this support has been terminated and plaintiff's parents understand that they cannot declare him as a "dependent" for tax year 1972.

30. The tax dependency provision in the Food Stamp Act leaves plaintiff BRODERSON with a tragic dilemma: either separate from and leave his pregnant wife (so that she and the new baby can receive food stamps); or stay with his wife and baby and be denied food stamps and, consequently, adequate nourishment. Either alternative will cause irreparable injury to the health and well-being of the BRODERSON household.

G. The SCHULTZ Household

31. Plaintiff KRISTI SCHULTZ is 19 years of age. She presently resides with a girlfriend and the latter's two children in Peahi, Maui, Hawaii. Plaintiff SCHULTZ has no income at all and is totally dependent on her roommate for food and shelter.

32. In August, 1971, plaintiff SCHULTZ started to receive food stamps. She received $27.50 in monthly food stamp benefits—she paid 50 cents and received $28 in food stamps. In November, 1971, however, her food stamp benefits were terminated because her parents intended to declare her as a "dependent" for 1971 tax purposes, despite the parents' refusal to provide plaintiff SCHULTZ with any support after June, 1971.

33. Plaintiff SCHULTZ was subsequently informed by food stamp officials in Hawaii that, if she got married, she would receive food stamps again. Partially as a result of this advice, plaintiff SCHULTZ and her fiance got married on January 19, 1972. Almost immediately thereafter, she and her husband applied for food stamp relief but were denied such assistance because plaintiff's parents had declared her a "tax dependent" in the previous year.

34. Due to this denial of food stamp relief, plaintiff SCHULTZ has been unable to purchase food. Her parents did not provide her with any support, despite plaintiff SCHULTZ's very desparate financial condition. Consequently, for a period of approximately four months, plaintiff was forced to live on whatever food she could find growing near her residence. Her diet consisted exclusively of sweet potatoes and water. As a result of this insufficient diet, plaintiff became seriously malnourished and subsequently became ill for a period of approximately four months. Additionally, the emotional and physical strain resulting from this deprivation was a major cause in her divorce from her husband in May, 1972.

35. Plaintiff SCHULTZ is presently without any funds. She receives no support from her parents and will not be claimed by them as a "dependent" for 1972 income tax purposes. Her sustenance is solely dependent on the charitable nature of her girlfriend who is, unfortunately, also indigent. Plaintiff SCHULTZ nonetheless is denied food stamp relief because her parents claimed her as a "dependent" in 1971, despite the refusal of her parents to provide support to the plaintiff for over one year.

H. The NEVAREZ Household

36. Plaintiff LEONILA NEVAREZ is 38 years of age and is the mother of five children: Larry (18 years old), Alma (17 years old), Marina (15 years old), Rocky (4 years old), and Joseph (10 months old). Plaintiff and her children reside at 626 Briggs Avenue in San Antonio, Texas. Plaintiff's monthly household income totals $215, derived entirely from the combined earnings of the two oldest children. Plaintiff's monthly household expenses include: $60 for rent; $41 for food; $19.50 for utilities; $7.50 for telephone bills; $22 for transportation; $2.50 for school costs; $4 for medicine and drugs; $15 for clothing; $3.75 for hygienic items and recreational expenses; and $30 for appliance and furniture payments.

37. Plaintiff NEVAREZ has great difficulty in supporting herself and her children on this meager income. Previously, she received substantial assistance through the Food Stamp Program. She received $144 a month in food stamps at a cost of $21—a benefit of $123, more than 50 percent of plaintiff's total monthly household income.

38. Recently plaintiff was denied further food stamp relief because food stamp administrators in her State thought that plaintiff's estranged husband, Raymond Nevarez, had claimed the children as tax dependents in 1971. If this were true, plaintiff's household would not be eligible for food stamps since the eldest son Larry is currently 18 years of age. Plaintiff's husband deserted the family several months ago and plaintiff NEVAREZ does not know his whereabouts. He has not provided any support to the family and plaintiff NEVAREZ believes that he has not even filed a tax return since 1968.

39. Since plaintiff NEVAREZ cannot prove that her husband in 1971 did not file a tax return claiming their children as "tax dependents," the NEVAREZ household has been denied food stamp aid. Plaintiff NEVAREZ, therefore, faces the problem of deciding whether she should ask her eldest son Larry to leave the home since he is the only child who can disqualify the household from food stamp assistance under the tax dependency provision. But, if Larry left the household, most of the household's income would also be lost since he earns most of the money that the family receives. As a result of the tax dependency provision, therefore, the NEVAREZ household faces an unsoluble dilemma in which either solution leaves the family hungry and improperly nourished.

V. Plaintiffs Bring This Suit As a Class Action

40. Plaintiffs are all impoverished persons who need food stamps for their nutritional well-being, but who are denied health-vital food relief solely because they live in households containing "tax dependent" members. Many thousands of needy persons throughout the country are similarly aggrieved by the "tax dependent" provision of the Food Stamp Act and the regulation promulgated thereunder. Subsequently, plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure, in their own behalf, in behalf of their households, and in behalf of indigents throughout the country who are similarly aggrieved by the defendants' unconstitutional denial of food stamps. The questions of fact and law are common to the plaintiffs and the class they represent and the members of the class are so numerous as to make joinder of parties impracticable. The claims of the plaintiffs are typical of

the claims of all members of their class, and the plaintiffs will fairly and adequately represent the claims of all members of the class. The defendants have acted or refuse to act on grounds generally applicable to the entire class.

VI. The Defendants

41. Defendant EARL L. BUTZ is the Secretary of the United States Department of Agriculture. Defendant EDWARD J. HEKMAN is the Administrator of the Agriculture Department's Food and Nutrition Service. Defendant JAMES KOCHER is the Food Stamp Division Director of the Agriculture Department's Food and Nutrition Service. Since the Food Stamp Division of the Agriculture Department's Food and Nutrition Service is the agency responsible for administering the nationwide Food Stamp Program, the defendants are fully responsible for implementing the unconstitutional statutory and regulatory provisions challenged herein.

VII. Causes of Action

42. The Food Stamp Program was established by Congress in 1964 to alleviate hunger and malnutrition among low-income groups. The Program was designed to provide all needy households with sufficient food stamps so that they can obtain a "nutritionally adequate diet through normal channels of trade." [7 U.S.C. § 2011] For poor people throughout the country, the Food Stamp Program can provide the difference between undernutrition and nutritional adequacy. The Program was designed to make sure that hunger and malnutrition would be eradicated throughout the country, in every needy household. [7 U.S.C. §§ 2011 and 2014(a)]

43. Prior to the 1971 amendments to the Food Stamp Act [P.L. 91-671 (Jan. 11, 1971)], determinations concerning the need and consequent eligibility to receive food relief was based exclusively on the income and resources of applicant households. The 1971 amendments to the Act, however, *inter alia*, added another basis for determining households' need to receive food stamp aid. As part of an amendment to section 5(b) of the Act [7 U.S.C. § 2014(b)], the new legislation states:

> . . . . Any household which includes a member who has reached his eighteenth birthday and who is claimed as a

> dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household, shall be ineligible to participate in any food stamp program established pursuant to this Act during the tax period such dependency is claimed and for a period of one year after expiration of such tax period . . . . [7 U.S.C. § 2014(b)]

44. On July 29, 1971, the defendants promulgated regulations pursuant to the Food Stamp Act amendments. With regard to the tax dependency provision, the regulations stated:

> Any household which includes a member who has reached his 18th birthday and who is claimed as a dependent for Federal income purposes by a member of a household which is not certified as being eligible for food assistance shall be ineligible to participate in the program during the tax period such dependency is claimed and for a period of one year after expiration of such tax period. [7 C.F.R. § 271.3(d), as contained in 36 Fed. Reg. 14108 (July 29, 1971)]

The statutory and regulatory provisions were implemented between January and May, 1972, depending upon the State.

45. Paragraphs 10 to 39 are reiterated and incorporated herein.

A. Plaintiffs' Rights to Due Process of Law

46. Although there is scant legislative history on the tax dependency provision, it seems clear that Congress enacted this provision in order to prevent non-needy households—those households with actual access to sufficient funds for adequate nutrition—from receiving food stamp aid. Congress wished to assure that all needy, but only needy, households would be eligible for food stamp relief. [7 U.S.C. § 2014(a)]

47. All of the plaintiffs herein, and many thousands of persons similarly situated, reside in impoverished households whose members are in dire need of Federal food relief. Since plaintiffs, or members of their households, have been declared "tax dependents" during the prior or present tax year by taxpayers who are ineligible for food stamps, plaintiffs' households have been conclusively presumed not to be poor and in need of food relief. For each

of the plaintiffs herein and thousands of persons similarly situated, this presumption is conclusive, irrebutable and erroneous.

48. Plaintiff LULA MAE MURRY's five-person household is conclusively deemed non-needy—even though the household's monthly income is a meager $57.50—just because plaintiff MURRY's former husband had declared two of her children as "tax dependents" in 1971. Despite her household's extreme indigency, plaintiff MURRY is prevented from adducing any evidence—during the application process and at any subsequent hearing challenging the denial of health-vital food aid—that the conclusive determination, of her household's non-needy status, is erroneous.

49. Plaintiff NANCY MARIE LEE's six-person household is conclusively deemed non-needy—even though the household's entire monthly income is $23 and its recurring monthly expenses are $249—just because plaintiff LEE's estranged husband had claimed her and two of her children as "tax dependents" in 1971. Although Mr. Lee's whereabouts are unknown and he does not contribute anything to his former household, and although the LEE household is virtually penniless, plaintiff LEE is prevented from adducing any evidence—during the application process and at any subsequent hearing challenging the denial of health-vital food aid—that the conclusive determination, of her household's non-needy status, is erroneous.

50. Plaintiff VICTORIA ALDERETE's six-person household is conclusively deemed non-needy even though the household's entire monthly income is $205 and its recurring monthly expenses total at least to that sum. Her household is conclusively and irrebutably deemed non-needy solely because her oldest child's father claimed the child as a "tax dependent" in 1971. Although the father contributes only partially to the household's expenses and although the ALDERETE household is extremely poor, plaintiff ALDERETE is prevented from adducing any evidence—during the application process and at any subsequent hearing challenging the denial of health-vital food aid—that the conclusive determination of her household's non-needy status, is erroneous.

51. Plaintiff PEARL R. BEAVERT's three-person household is conclusively deemed non-needy—even though

the household's monthly income is only $224 and the recurring monthly expenditures for necessities are $296—solely because plaintiff's 18 year old daughter was claimed as a "tax dependent" in 1971 by the plaintiff's estranged husband. Although plaintiff's husband provides absolutely no support to the BEAVERT household, and although the BEAVERT household is impoverished, no one in the household is permitted to adduce any evidence—neither during the application process nor at any subsequent hearing challenging the denial of food stamp aid—that the conclusive determination, of the household's non-needy status, is erroneous.

52. The three-person household of plaintiff JOE BEN VALDEZ and ISABEL VALDEZ is conclusively deemed non-needy—even though the household's welfare allotment of $224 is exceeded by its recurring monthly expenditures of $237 for necessities—solely because JOE BEN VALDEZ's father claimed the plaintiff as a "tax dependent" in 1971. Although plaintiff JOE BEN VALDEZ's father provides no support to the plaintiff's household (since the father is very poor and is heavily in debt) and although the plaintiffs are poor, the plaintiffs are not permitted to adduce any evidence—neither during the application process nor at any subsequent hearing challenging the denial of food stamp aid—that the conclusive determination, of the household's non-needy status, is erroneous.

53. Plaintiff ROBERT A. BRODERSON's two-person household (that will soon become a three-person household when plaintiff's child is born in July, 1972) is conclusively deemed non-needy—even though the household's total monthly income is a meager $110—because plaintiff BRODERSON's parents claimed him as a "tax dependent" in 1971. Although plaintiff BRODERSON receives no support from his parents, and although the BRODERSON household is very poor, the plaintiff is prevented from adducing any evidence—during the application process and at any subsequent hearing challenging the denial of food stamp aid—that the conclusive determination, of the household's non-needy status, is erroneous.

54. Plaintiff KRISTI SCHULTZ is conclusively deemed non-needy—even though she has no income whatsoever and has been severely ill due to malnutrition—solely because

her parents claimed her as a "tax dependent" in 1971. Although plaintiff SCHULTZ has received no support from her parents for over a year, and although plaintiff SCHULTZ is absolutely penniless, she is not permitted to adduce any evidence—neither during the application process nor at any subsequent hearing challenging the denial of food stamp aid—that the conclusive determination, of her non-needy status, is erroneous.

55. Plaintiff LEONILA NEVAREZ's six-person household is conclusively deemed non-needy—even though the household receives only $215 in monthly income—solely because plaintiff's estranged husband is deemed to have claimed their children as "tax dependents." Although Mr. Nevarez's whereabouts are unknown and he provides no support to the household, and despite the household's impoverished status, plaintiff NEVAREZ is prevented from adducing any evidence—during the application process and at any subsequent hearing challenging the denial of food stamp aid—that the conclusive determination, of the household's non-needy status, is erroneous.

56. As a result of these erroneous conclusive presumptions, which altogether remove all health-vital food relief from the indigent plaintiffs, said plaintiffs are left without sufficient resources to obtain a nutritionally adequate diet. By conclusively, irrebutably and erroneously presuming that plaintiffs are not poor, thereby denying them much-needed food aid, the tax dependency provisions in the Food Stamp Act and regulations are violative of the Fifth Amendment's due process guarantees.

B. Plaintiffs' Rights to Equal Protection

57. The tax dependency provisions in the Food Stamp Act and regulations create two different classes: the first class is composed of needy persons who reside in households that do not contain individuals, 18 years or older, who were claimed as "tax dependents" within the past year by a taxpayer ineligible for food stamps; and the second class is similarly composed of needy persons but who reside in households containing at least one member, 18 years or older, who was claimed as a "tax dependent" within the past year by a taxpayer ineligible for food stamps.

58. All of the plaintiffs, as members of the latter class, are denied health-vital food aid while persons in the former

class are eligible for food stamp assistance. Such denials, to plaintiffs and all other persons in the latter class, despite their desparate need for food stamp assistance, constitutes an arbitrary and capricious discrimination that is not rationally related to the purposes of the Food Stamp Act. [See 7 U.S.C. § 2011 and 2014(a).] As such, the tax dependency provisions are violative of the Fifth Amendment's guarantee of equal protection.

59. The discriminatory deprivation of Federal food assistance, due to the tax dependency provisions, also impinge upon fundamental constitutional rights without there being a "compelling governmental interest" therefor. The fundamental constitutional rights that are impinged upon by the discriminatory denials of food stamps include:

i. *Due Process of Law*

60. The right to due process of law (guaranteed by the Fifth Amendment), insofar as the tax dependency provisions wrongfully, but conclusively and irrebutably, presume that plaintiffs are non-needy and have access to nutritional adequacy, thereby preventing plaintiffs from adducing facts to the contrary. [See paragraphs 46 to 56.]

ii. *Freedom of Association and Privacy*

61. Plaintiffs' rights to freedom of association and privacy (guaranteed by the First and Ninth Amendments) are also impinged insofar as they must either break up their households—separating from their spouses, children and loved ones—or be denied much-needed food relief. Since the tax dependency provisions *eliminate all persons in a household* from food stamp relief if a "tax dependent" resides in said household, the "tax dependent" must be ousted from the home if the other household members are to receive food relief.

62. If plaintiff LULA MAE MURRY is to receive health-vital food stamp assistance for herself and part of her household, she must oust her son Jordan Murry and her grandson Sammy Lee Murry from her house (since both of them were declared as "tax dependents" and are at least 18 years of age). By separating Jordan Murry and Sammy Lee Murry from their younger brothers and herself, plaintiff MURRY and the rest of her household become eligible for food stamp relief.

63. If plaintiff NANCY MARIE LEE is to receive health-vital food assistance for herself and part of her household, she must oust her sons James Whitener, who is mentally retarded and requires constant supervision, and Ricky Joe Whitener, who has had juvenile delinquency problems and also needs parental care and attention, from her house. By separating James Whitener and Ricky Joe Whitener from their younger sisters and brother, and from herself as well, plaintiff LEE and the rest of her household become eligible for food stamp relief.

64. If plaintiff VICTORIA ALDERETE is to receive health-vital food stamp assistance for herself and part of her household, she must oust her son George from her household (because George is 18 years old and was declared as a "tax dependent" in 1971). By separating George from his sisters and brothers and herself, plaintiff ALDERETE and her other children are eligible for food stamp relief.

65. If plaintiff PEARL R. BEAVERT is to receive health-vital food stamp assistance for herself and part of her household, she must oust her 18 year old daughter, Crystal Beavert, from her house (since she was declared a "tax dependent" in 1971). By separating Crystal Beavert from her brother and herself (which would prevent Crystal from completing her high school education), plaintiff BEAVERT and her son would become eligible for food relief.

66. If plaintiff ISABEL VALDEZ is to receive health-vital food stamp assistance for herself and her one month old child, she must separate from her husband, plaintiff JOE BEN VALDEZ, since he was declared a "tax dependent" in 1971 by his impoverished father. By separating from her husband, thereby shattering the marital relationship and depriving the infant of paternal support and care, plaintiff ISABEL VALDEZ and her child would become eligible for food stamp relief.

67. If Beverly Broderson is to receive health-vital food stamp assistance for herself and her expected child, she must separate from her husband, plaintiff ROBERT A. BRODERSON, since he was declared a "tax dependent" in 1971 by his parents. By separating from her husband, thereby shattering the marital relationship and depriving the expected infant of paternal support and care, Beverly Broderson and her expected child would become eligible for food stamp relief.

68. Plaintiff KRISTI SCHULTZ, who was declared a "tax dependent" by her parents in 1971, has divorced her husband, thereby allowing her husband to become eligible for food stamp assistance.

69. If plaintiff LEONILA NEVAREZ is to receive health-vital food stamp assistance for herself and part of her household, she must oust her son Larry Nevarez—who is the household's major source of income—from her house. By separating Larry Nevarez from his brothers and sisters, and herself as well, plaintiff NEVAREZ and the rest of her household become eligible for food stamp relief.

70. All of the plaintiffs' rights to food assistance, therefore, are conditioned on their giving up their constitutional right to associate—with their spouses, children and/or loved ones—in the confines of their home. Consequently, the tax dependency provisions very severely and tragically impinge upon plaintiffs' freedom of association and privacy.

iii. *Right to Travel and Settle*

71. Plaintiffs' rights to travel and settle (that, as held by the Supreme Court, are fundamental to the Constitution), are also impinged insofar as plaintiffs are penalized if they leave their parents' homes. Plaintiffs JOE BEN VALDEZ, ISABEL VALDEZ, ROBERT A. BRODERSON, and KRISTI SCHULTZ—who have recently gotten married—have been denied health-vital food aid because they moved from their parents' homes and were declared "tax dependents" by their parents during the past tax year. They are, therefore, penalized—by losing their food stamp relief—because they moved and settled away from their parents; they would have received such food aid if they stayed in their parents' homes. Consequently, the tax dependency provisions very harmfully impinge upon plaintiffs' rights to travel and settle.

72. Plaintiffs' rights to due process, to travel and settle, and their freedom of association and privacy, are severely impinged upon by the discriminatory deprivation of food assistance resulting from the tax dependency provisions. There is no "compelling governmental interest" that is advanced by the discriminatory deprivation of relief and, consequently, the tax dependency provisions violate the Fifth Amendment's guarantee of equal protection.

VIII. The Harm to Plaintiffs and Their Class

73. Plaintiffs' impoverished circumstances have left them unable to obtain a nutritionally adequate diet. They and their households are in dire need of food assistance. If plaintiffs and their class do not receive food stamp aid, they and their households will continue to be subjected to the irreparable injuries resulting from hunger, undernutrition, and consequent ill health.

IX. Prayer for Relief

74. Plaintiffs, and all others similarly situated, are suffering, and will continue to suffer, grievous injury as a result of the tax dependency provisions in the Food Stamp Act and regulations. They seek relief from these unconstitutional provisions. No previous application for the relief sought herein has been made to this or any other Court. No adequate remedy at law is available to the plaintiffs.

WHEREFORE, plaintiffs, on behalf of themselves, their households and all others similarly situated, pray that this Court:

(a). Assume jurisdiction in this case;

(b). Convene a three-judge court, pursuant to 28 U.S.C. §§ 2282 and 2284, and set this case down for a prompt hearing and determination of this controversy;

(c). Order, pursuant to Rules 23(b)(2) and 23(c)(1) of the Federal Rules of Civil Procedure, that this action shall be maintained as a class action in behalf of all impoverished households in the country who are similarly aggrieved by the tax dependency provisions of the Food Stamp Act and regulations;

(d). Declare that the tax dependency provisions of the Food Stamp Act and regulations violate plaintiffs' rights to due process of law as guaranteed by the Fifth Amendment to the United States Constitution;

(e). Declare that the tax dependency provisions of the Food Stamp Act and regulations violate plaintiffs' rights to equal protection of law as guaranteed by the Fifth Amendment to the United States Constitution;

(f). Preliminarily and permanently enjoin the defendants—their agents, employees, successors in office, and those that work in concert with them—from denying food stamp eligibility to the plaintiffs, and all other persons similarly

situated, on the basis that plaintiffs, or members of their households, have been declared "dependents" by Federal taxpayers who are, themselves, ineligible for food stamps; and

(g). Provide such further relief as this Court may deem proper or just.

Respectfully submitted,

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Policy and Law
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[Title Omitted in Printing]

[Filed July 17, 1972]

AFFIDAVIT OF LULA MAE MURRY

STATE OF ALABAMA
COUNTY OF JEFFERSON } ss

Lula Mae Murry, being duly sworn, deposes and says:

1. I am a plaintiff in this lawsuit. I am 50 years old and reside at 118 Tenth Street in Bessemer, Alabama.

2. My household consists of myself, my sons Jordan Murry, 19 years old, and David Murry, 15 years old, and my grandsons Sammy Lee Murry, 18 years old and Alfred James, 8 years old. My sons and grandsons all attend school.

3. Our household income is $15 every two weeks which I receive from my ex-husband as court-ordered child support for my sons. My ex-husband also pays our household rent which totals $25 per month. Our household income, therefore, totals approximately $57.50 a month. I have applied for assistance through the Alabama Pensions and Security Department's Aid to Dependent Children program and received notification that this aid will be forthcoming at the end of this month. I do not know, as yet, what this financial assistance will total.

4. My household's monthly expenses include the following items:

Gas	$ 8.50
Electricity	10.00
Medical costs (monthly visit to (doctor and pills for nerves)	17.00
Transportation (to Doctor's office)	2.00
Laundry	3.00
	$40.50

5. In addition to the expenses itemized above, I must spend a great deal of money for food. For the past 7 or 8 years I have been using food stamps to meet this expense. I have been able to purchase $128 worth of food stamp coupons at a cost of $11, thereby saving $117 in food costs each month—a sum equal to 200% of my household's total

monthly income. Food stamps have been the only way that I have been able to feed the four growing boys in my household.

6. Since April, 1972, I have been denied this vital food stamp aid. I was informed at the end of March, 1972, that this aid would no longer be available to me because by ex-husband, Lazrous Murry had claimed my two sons and my grandson, Sammy Lee Murry, as dependents on his 1971 Income Tax Returns. Since that date I have been unable to provide my household with adequate food, and will not be able to do so without food stamp aid.

7. My ex-husband, Lazrous Murry, is 55 years old. We were divorced about eleven years ago. Lazrous Murry has not shared the same household with me or his children since. He has remarried and now lives with his second wife and her two children (whom he has adopted) in Bessemer, Alabama. To the best of my knowledge, he supports his wife and adopted children and claims them as dependents for tax purposes. He is employed by the Tennessee Coal, Iron and Railroad Company. I do not know how much money he earns. The only support my household receives from him is the aforementioned court-ordered child support of $15 every two weeks and court-ordered monthly rent payments.

8. I have no way to replace the food savings that my household received from food stamps. Even if I were to stop seeing my doctor each month, cease using basic household utilities, default on my rent and save our laundry funds, I could not amass enough funds each month to buy food for my household. My only alternative is to force my oldest son and oldest grandson to leave their home, since they were both claimed as dependents by my ex-husband and are 19 years and 18 years of age respectively. However, these boys are in school and would be without sufficient funds with which to live on. I can not throw them out of their own home. Instead, we will have to go without the proper nutrition that we have received over the past years through food stamp aid. We will, consequently, suffer the harm that inevitably results from hunger and malnutrition.

/s/ Lula Mae Murry
LULA MAE MURRY

Subscribed and sworn to before
me this 6th day of June,
1972 by Lula Mae Murry

Helen Cooley
NOTARY PUBLIC

My Commission expires
March 13, 1976

[Title Omitted in Printing]

[Filed July 17, 1972]

AFFIDAVIT OF NANCY MARIE LEE

STATE OF ALABAMA }
COUNTY OF MORGAN } ss.

NANCY MARIE LEE, being duly sworn, deposes and says:

1. I am a plaintiff in this lawsuit. I am 39 years old and reside at 1712 Locust Street, Decatur, Alabama.

2. My household consists of six persons: myself, and my five children, James Whitener, 20 years old, Ricky Joe Whitener, 18 years old, Trease Faye Whitener, 17 years old, Cynthia Ann Lee, 12 years old, and Charles Lee, 10 years old. My husband, Charles S. Lee, is not a member of my household—he deserted his family several months ago.

3. I have received no support from my husband since he deserted his family. Consequently, our present household income is $23, which I receive from the Alabama Pension and Security Department's Aid to Dependent Children program for my daughter Faye. I have applied for additional funds under this same program for support of my other children, and expect to receive these monthly supplements in the near future.

4. My monthly household expenses include the following items:

Rent	$ 13.00
Food	148.00
Electricity and Utilities	8.00
Clothing	20.00
Medicine	20.00
Transportation	15.00
Personal incidentals, hygienic goods, etc.	25.00
	$249.00

5. Presently, I am unable to afford even a minimum nutritional diet for myself and my children. Should I receive an increase in my monthly A.D.C. payments, I will still be able to afford only a small fraction of the food, clothing, and

household goods necessary to maintain my household. I would, however, be able to afford substantially more household necessities if my household was eligible for food stamps. With the $69.00 per month that I anticipate from the Alabama Department of Pensions and Security, I would be able to purchase $148.00 worth of food at a cost of $14.00 in food stamps—thereby realizing $134.00 each month in food savings—a sum equivalent to almost 200% of my anticipated monthly income.

6. My household has been refused this badly needed food stamp aid by the Alabama Department of Pensions and Security because my husband declared my sons Ricky and James Whitener as tax dependents on his 1971 tax return. This benefit is denied us despite the fact that my husband has not been supporting me and my children since he deserted us earlier this year, and, most likely, will not be supporting us in the future.

7. My husband was employed in Huntsville, Alabama. He left that job when he deserted his family several months ago. I do not know his present whereabouts and do not know if he is employed. My children and I have received no support from him since he left us.

8. Food stamps provide the only solution to my family's present inability to purchase a nutritionally adequate diet. However, because of the "tax dependent" provisions in the Food Stamp Act, this aid will only be available if I force my two oldest children to leave their home. I cannot do this to my son James who suffers from mental retardation and has spent some time in the Alabama Mental Institution in Tuscaloosa, Alabama. Nor can I throw my son Ricky out into the streets. Instead, my family will continue to live without adequate food and other necessities of life. I fear that hunger, undernutrition, and malnutrition will soon inflict greater suffering upon my family and myself.

/s/ Nancy M. Lee
NANCY M. LEE

Subscribed and sworn to
as true before me this
8th day of June, 1972.

William L. Falls
NOTARY PUBLIC

[Title Omitted in Printing]

[Filed July 17, 1972]

AFFIDAVIT OF VICTORIA ALDERETE

STATE OF TEXAS
COUNTY OF BEXAR } ss

VICTORIA ALDERETE, being duly sworn, deposes and says:

1. I am a plaintiff in this lawsuit. I am 43 years old and of Mexican-American descent. I am a citizen of the United States and reside at 302 St. Louis Street in San Antonio, Bexar County, Texas.

2. My household consists of six persons, to wit: myself and the following five children:

George, my son, 18 years old;
Consuelo, my daughter, 14 years old;
David, my son, 9 years old;
Carlos, my son, 5 years old;
Victoria, my daughter, 1-½ years old.

3. I was divorced on January 8, 1968, and ex-husband's name is Juan Alderete. He is 45 (Forty-Five) years old, and he is not living in our household. To the best of my knowledge, it was not ordered or stipulated in the divorce decree which dissolved this marriage, that either my husband, or I, should be permitted to claim the exemptions or deductions applicable to the children born during the marriage for federal income tax purposes. My husband resides at 950 S.W. 39th Street in San Antonio, Bexar County, Texas.

4. My household's total monthly income is $205.00. This amount is attributed to $105.00 child support payment, and $100.00 AFDC grant.

5. My household's monthly expenses include the following:

House payment	$ 73.00
Food	71.00
Utilities (gas, electricity and water)	17.00
School costs	4.00
Clothing	13.00
Laundry	18.00
Hygenic Items and recreation	9.00
	$205.00

6. My household budget is a very tight one, and I am barely able to maintain my family and provide for the above-listed necessities. I have been able to do this, thus far, primarily because of my relatively low food costs, which has been kept to a minimum because my household has used food stamps. In the past, I have been able to purchase $144.00 worth of food stamps that have cost me $46.00, thereby saving me $98.00 in monthly food expenses— a sum equivalent to almost 50% of my household's total monthly income. With an additional expenditure of $25.00 to supplement my monthly food stamp purchase, I have been able to feed myself and my children adequately.

7. Recently, I was informed by the Texas Department of Public Welfare that my children and I could no longer receive food stamp assistance because my ex-husband, Juan Aldetete, [sic] claimed our children as dependents for federal income tax purposes. A true and correct copy of this denial is attached hereto, and marked as Exhibit A, and incorporated herein for all purposes. To the best of my knowledge, my husband has claimed our children as dependents for federal income tax purposes since our divorce was granted.

8. I appealed the Welfare Department's decision denying my family food stamp assistance on May 9, 1972. A true and correct copy of my petition for an appeal hearing is attached hereto, and marked as Exhibit B, and incorporated herein for all purposes. On or about May 26, 1972, I was notified as to my appeal hearing. A true and correct copy of such notification is attached hereto, and marked as Exhibit C, and incorporated herein for all purposes. My representative attended the appeal hearing on my behalf. On or about June 22, 1972, I received the Hearing Officer's decision, which stated that my appeal was dismissed because I did not appear, but from a review of available information upon which the denial of my eligibility was based it was felt that clarification of the Tax Dependent provisions of the food stamp program needed clarification and that my food stamp eligibility would be continued. A true and correct copy of this decision is attached hereto, and marked as Exhibit D, and incorporated herein for all purposes. However, on or about July 6, 1972 my legal representative was informed by the Hearing Officer that I would be denied eligibility to participate in the food stamp program, based

on additional clarification received by him of the tax dependent provisions of the food stamp program. A true and correct copy of such notification is attached hereto, and marked as Exhibit E, and incorporated herein for all purposes.

9. The only effect my husband's income tax returns could possibly have on my receiving food stamps is his claiming my oldest son, George, as a dependent. According to the Welfare Department, since George is 18 years old, such a claim renders my entire household ineligible for food stamps under the Food Stamp Act's "tax dependency" provision. Therefore, since I do not have any control over whether my husband claims our children as dependents for income tax purposes, the only way that my family can receive food stamps is if I force George to leave our home. Should I do this, there would be no child age 18 or older living in our household and therefore the "tax dependency" provision would not disqualify us for food stamps.

10. My family is a poor one, but very closely knit. Yet if my oldest son remains in our home, my family cannot receive food stamp assistance. I cannot force my own child to leave his home, but if I do not, we will not be able to have the food stamp assistance we received in the past and without it I fear my growing children will be faced with the horrors of inadequate diets leading to hunger and malnutrition.

VICTORIA ALDERETE
/s/ Victoria Alderete

Subscribed and sworn to before me this 11th day of July, 1972.

/s/ Rosa Lee Ortega
Notary of Public in and for
Bexar County, Texas

EXHIBIT-A

Form 821
March, 1972

STATE DEPARTMENT OF PUBLIC WELFARE

The State of Texas

PO Box 2410
San Antonio, Texas 78298
May 8, 1972

Ms. Victoria Alderete
302 St. Louis Avenue
San Antonio, Texas 78237

Case No: 2-237614

Dear Ms. Alderete:

After a careful review of your present circumstances, this Department has determined that you are not eligible for Food Stamps.

beginning 5-2-72 because: there is a tax dependent person in your home.

The above change will be delayed for 15 days from the date at the bottom to give you or your representative time to discuss it with a representative in this office. The representative in this office will be available to discuss with you the reason for the change, give you an opportunity to raise questions and allow you to give more information about your situation.

If you wish, you may also request a hearing before this decision is made final. A department representative will be glad to explain hearing procedures during a conference if you so desire.

For either a conference or to request a hearing, write, call or come by the office 1410 N. Elmendorf Street (phone 734-7245) and someone from this Department will be glad to help you.

/s/ Linda Ewing
(Signature) (Linda Ewing, WS Tech II)
1410 N. Elmendorf Street
State Department of Public Welfare
5-2-72
(Date)

EXHIBIT B

State of Texas
Department of Public Welfare

Form 17
November, 1971

PETITION FOR FAIR HEARING

TO: James C. Parker,
Hearing Officer
State Department of
Public Welfare
P.O. Box 2410
San Antonio, Texas

Case Name Victoria Alderete
Category AFDC
Case No. _____
Region No. 004
Race White County Bexar
Mailing Address _____
302 St. Louis
San Antonio, Texas

Program
Chesk *One:*

- ☐ Money Payment
- ☐ Medical Assistance
- ☒ Food Stamps
- ☐ Commodities
- ☐ Services
- ☐ WIN

Basis for Dissatisfaction
Check *One* or more:

- ☐ Denial of Application
- ☐ Denial of Assistance
- ☐ Amount of Assistance
- ☒ Reduction of Assistance
- ☐ Level of Nursing Care Approved
- ☐ Decision of Medical Review Team Regarding Incapacity
- ☐ Delay in Completing Application
- ☐ Delay in Raising Assistance
- ☐ Delay in Rendering Services
- ☐ Refusal to Act
- ☒ Opportunity to Apply Not Facilitated
- ☐ Decision to Refer for Employment or Training
- ☐ Decision *Not* to Refer for Employment or Training
- ☐ Decision Contrary to Claimant's Preference With Respect to Service

This request under 15 days Fair Hearing Procedure?

Yes ☒ No ☐

Check one:

☒ Appellant wishes to have an *appeal hearing* so that he may present evidence and/or information concerning his situation.

☐ Department representative has agreed to assist Appellant in filing a written *statement* regarding the case situation and no formal hearing will be necessary.

Give date and medium, appellant clearly expressed a desire to appeal.

Date May 9, 1972

Medium _____

Department
Representative _____

Budgeted Job No. _____

Office
Headquarters _____

• • • • •

Form 17
Page 2

Complete this side of form *only* if client has a representative.

I hereby notify the Hearing Officer that Melvin N. Eichelbaum & John Cowan (Print or type name of representative or legal counsel) who is acting in capacity of my legal representative is representing me in this appeal; therefore, this is my authorization for you to release to my legal representative, copies of any factual data furnished me prior to, during or after the Appeal Hearing.

If signed with an "X", two witnesses are required.

Victoria Alderete
Signature of Appellant

Melvin N. Eichelbaum
Signature of Representative

Bexar County Legal Aid Association
203 West Nueva Street
San Antonio, Texas 78207
Address of Representative

May 9, 1972
Date Signed

_____
Witness

_____
Witness

EXHIBIT C

STATE DEPARTMENT OF PUBLIC WELFARE

The State of Texas

Form 18

July, 1971

Acknowledgment and Notice of Fair Hearing

Mrs. Victoria Alderete
302 St. Louis
San Antonio, Texas 78237

Category AFDC

Case No. 237614

The Department of Public Welfare has received your request for a fair hearing in which you asked for a review of the recent action (or failure to act) on your case.

You are, therefore, advised that if you wish to avail yourself of this opportunity of appearing in person before a representative of the Department you may do so

at 3:00 o'clock P.M., June 7, 1972

at Guadalupe Community Center,
1801 W. Durango, 2nd Floor
San Antonio, Texas.

An informational sheet entitled "Statement of Appellant's Rights in Hearing Proceedings" is included with this letter to help you understand the appeal procedure.

In the event it is not possible for you to keep this appointment, please use the enclosed statement and envelope to notify me of the reason(s) why. If the time and place indicated above are suitable, please do not return the enclosed statement.

You may be assured that careful consideration will be given to all the facts concerning this situation.

STATE DEPARTMENT OF PUBLIC WELFARE

BY Saul Zalaznick
Hearing Officer

SAUL ZALAZNICK
Type Name of Hearing Officer

P.O. Box 2410—San Antonio
Type Address of Hearing Officer

223-5656

DATE: May 25, 1972

cc: Worker 8-01
Supervisor—Unit 8
Reports & Statistics, 042-0
Legal Aid

EXHIBIT D

P. O. Box 2410
San Antonio, Texas 78298
June 8, 1972

Mrs. Victoria Alderete
302 St. Louis
San Antonio, Texas 78237

Dear Mrs. Alderete:

You failed to appear for a scheduled hearing on June 7, 1972, regarding the denial of your eligibility to participate in the Food Stamp Program and you did not notify the hearing officer that you would not be able to appear. Your legal representatives did appear to represent you.

In compliance with the policies and procedures of this Agency it is assumed that you have abandoned your petition for a hearing and your appeal is dismissed.

From a review of available information upon which the denial of your eligibility was based it is felt that clarification is needed of the tax dependent provisions of the Food Stamp Program. Lacking such clarification at the present time, it was recommended that your Food Stamp Program eligibility be continued.

The worker has been requested to take appropriate action to continue your eligibility to purchase Food Stamps.

Sincerely yours,

/s/ Saul Zalaznick
SAUL ZALAZNICK
Appeals Analyst

SZ jmk
enc: Form 21
cc: Worker 8-01
Supervisor—Unit 8
Reports & Statistics, 042-0
Legal Aid

State of Texas
Department of Public Welfare

Form 21
July, 1971

OFFICIAL RECORD OF FAIR HEARING

1. *Identification*

Appellant Victoria Alderete Program Food Stamp Category-Case No. AFDC 2370

Appellant _____ Program _____ Category-Case No. _____

County Bexar Region No. 004 Fair Hearing No.(s). _____

2. *Persons Present for Fair Hearing:*

	Name	Capacity
1.		
2.		
3.		
4.		
5.		
6.		

3. *Principal Issue In Hearing Designate By Code*

Code: T

Specify: (Complete Only if Codes G or T are used)

Food Stamp Eligibility

4. Representation of Appellant During Hearing

Code: _____

5. *Nature of Request*

XX Appellant requested hearing as a challenge of fact or judgment

_____ Appellant requested hearing as protest of agency policy

6. *Record of Action Taken*

Date of Departmental Action From Which Appeal is Made 5-2-72

Type Action Denial of Food Stamp Assistance From _____ To _____ Effective 7-1-72

Type Action _____ From _____ To _____ Effective _____

Code No. and Principal Reason: Food Stamp Denial Code 11—Unable to establish eligibility due to tax dependents in the household.

Date of Request for Fair Hearing 5-11-72

Fair Hearing Held At DISMISSED (Time) 6-7-72 (Date) 1801 W. Durango (Place)

State of Texas
Department of Public Welfare

Form 21
July, 1971
Page 2

7. Budget Sheet

Item	Hearing Officer's Budget In Relation to Decision Date _____		Hearing Officer's Budget of Changes Since Decision Date _____	
	I	II	I	II
Personal Needs				
Housing: Public / Private				
Utilities				
Prescribed Drugs				
Social Care				
Professional Care				
Other (Specify)				
Total Needs				
Recognizable Needs				
Net Income				
Unmet Needs				
Recommended Grant				
Special Allowance: No. Months _____				

Group Income Source	
1. OASDI	
2. V.A.	
3. R.R.	
4. Net Earned	
5. Other Income	
6. Total Income	
7. Less Income Exemp.	
8. Net Income	

Other Grant:
Adult $_____
AFDC $_____

8. Hearing Officer's Decision and Explanation

Point at issue is the denial of Food Stamp Program eligibility due to the presence of a "tax dependent" in the household.

Appellant failed to appear for a scheduled hearing and did not notify the hearing officer that she would be unable to appear. The appeal is dismissed.

A review of the available information reflects that parents are divorced; the child resides in the household of the appellant; the parent outside the home furnishes some support which has been previously established to be less than half of the child's support during the preceding and current years since the child is a recipient of AFDC and that the child has been claimed as a tax dependent for Federal Income Tax purposes during the last tax year.

It is felt that clarification is needed in the "tax dependent" provisions of the Food Stamp Program as it is felt that the intent of said provisions is to deny eligibility to bona fide tax dependents who are not residing in the taxpayer household due to attendance at school or residing in communal type arrangements and the taxpayer is either furnishing support or capable of furnishing support to the tax dependent. Clarification of the aforementioned provisions has been requested and pending said clarification it is recommended that the AFDC household not be denied Food Stamp assistance.

The worker has been notified of this recommendation.

STATE DEPARTMENT OF PUBLIC WELFARE
BY Saul Zalaznick
Hearing Officer

SAUL ZALAZNICK
Type Name of Hearing Officer
1801 W. Durango
Type Address of Hearing Officer

DATE OF DECISION 6-7-72

cc: Worker 8-01
Supervisor—Unit 8
Reports & Statistics, 042-0
Legal Aid

EXHIBIT E

The State of Texas

STATE DEPARTMENT OF PUBLIC WELFARE
P. O. Box 2410
San Antonio, Texas 78298

July 5, 1972

Mr. Melvin N. Eichelbaum
Bexar County Legal Aid Association
203 W. Nueva
San Antonio, Texas 78207

RE: Victoria Alderete, Food Stamp Appeal
302 St. Louis, San Antonio

Dear Mr. Eichelbaum:

This office has received clarification regarding tax dependent provisions contained in this Agency's Food Stamp Program Handbook which necessitates reconsideration of the recommendation made to continue Food Stamp eligibility of your client, Victoria Alderete, whose appeal was dismissed when she failed to appear for the hearing.

The U.S. Department of Agriculture, Dallas, has advised that tax dependent requirements can only be interpreted as written into the law and that there can be no deviation from the wording of the law. In order for this Agency to be in compliance with Federal regulations, it is deemed that the action of the Agency and the provisions of paragraphs 2261 and 2262, Food Stamp Program Handbook, are applicable and Mrs. Alderete will be denied her eligibility to participate in the Food Stamp Program.

Sincerely yours,

/s/ Saul Zalaznick
SAUL ZALAZNICK
Appeals Analyst

SZ/jmk
cc: Enrique Salinas
Regional Director
Financial Services

[Title Omitted in Printing]

AFFIDAVIT OF PLAINTIFF
PEARL R. BEAVERT

[Filed July 17, 1972]

STATE OF WASHINGTON
COUNTY OF KING } ss:

PEARL R. BEAVERT, being first duly sworn, upon oath, deposes and says:

I live at 2008 - 8th Avenue North, Seattle, Washington, 98109, with my two children. I am divorced.

We are recipients of Aid to Families With Dependent Children from the Public Assistance Division of the Department of Social and Health Services of the State of Washington. We receive $224.00 per month for my two children and myself.

On May 26, 1972, I received a letter dated May 24, 1972, from the Department of Social and Health Services signed by H. Greenwood, notifying me that my food stamp benefits would be terminated because my household contained a tax dependent, my daughter, Crystal, who was claimed for the year 1971 on her father's Federal Income Tax Return. I was further advised that because her father is not a person certified for the food stamp program, my household would now be ineligible for such benefits.

My daughter, Crystal, is in high school and not only do I have great love and affection for her, but I feel morally bound to support her and allow her to continue living in my home. I believe it would be greatly detrimental to her to force her to either leave our home or find employment to supplement our income.

My monthly expenses are as follows:

house payment	$102.00/mo.
food and household necessities	$125.00/mo.
utilities	$ 69.00/mo.
TOTAL	$296.00/MONTHLY

In addition, I have other household expenses such as clothing, transportation, and toiletries. I have no set amount for these inasmuch as I must eke out of my monthly income any small sum I can for these necessities.

My family would be unable to survive were it not for small and infrequent gifts and loans from relatives.

Prior to the time I was terminated from the food stamp program, I was receiving $88.00 worth of food stamps and paying $58.00 for them.

Since the time I have been terminated, my family and I have suffered great hardship. My children are both teenagers and need a substantial amount of nutritional food each day.

By denying my family and I food stamps, my family is threatened with serious and irreparable injury. We cannot maintain adequate nutrition for all of us and we need immediate help.

/s/ Pearl R. Beavert
PEARL R. BEAVERT
Plaintiff

SUBSCRIBED AND SWORN to before me this 18th day of June, 1972.

/s/ Valerie D. Badon
Notary Public in and for the State of Washington, residing at Seattle.

My commission expires on the 7th day of December, 1974.

LINDA L. DAWSON
SEATTLE LEGAL SERVICES CENTER
2516 East Cherry Street
Seattle, Washington 98122
(206) 323-0350

[Title Omitted in Printing]

AFFIDAVIT OF JOE BEN VALDEZ

[Filed July 17, 1972]

STATE OF COLORADO
COUNTY OF PUEBLO } ss:

Joe Ben Valdez, being duly sworn, deposes and says:

1. I am a plaintiff in this lawsuit. I am 18 years old and reside at 1114 E. 6th Street, Pueblo, Colorado.

2. My household consists of myself, my wife Isable, 18 years of age, and our infant baby, 10 days old.

3. Our total household income is $224.00 a month—$194.00 is received from the Colorado Welfare Department's ADC-UP Program, and $30.00 is received from the same source for transportation expenses incurred by me as a participant in the Work Incentive Training Program.

4. Our monthly expenses include the following items:

Rent	$80.00
Electricity	4.00
Food	82.00
Clothing	10.00
Insurance	8.00
Transportation (Gas and Auto Repairs)	45.00
Education (Lunches)	6.00
Recreation	2.00
	$237.00

We are barely able to meet these expenses and often must do without basic necessities of life or adequate food and clothing. These financial problems have increased recently when my wife gave birth to her child.

5. Presently, more than a third of our monthly budget is spent on food. Food Stamps would be most helpful in reducing this expense, thereby allowing us an adequate nutritional diet and additional funds for clothing, hygenic goods, personal incidentals, etc. According to present standards, I believe I could purchase $88.00 worth of Food Stamp coupons each month at a cost of $58.00, thereby saving $30.00 in food costs each month.

6. Despite our desperate need for food relief, my house-

hold has been denied food stamps by the Colorado Welfare Department solely because my father, Ben G. Valdez, claimed me as a dependent for Federal income tax purposes for the year 1971. I am no longer a dependent, and will not be claimed as such in 1972.

7. Ben G. Valdez is the head of five-member household consisting of himself (54 years od), his wife, Rose (53 years old), and Daniel (17 years old). He is a laborer at the Colorado Fuel and Iron Corporation and earns approximately $450.00 monthly.

8. Ben Valdéz's monthly household expenses include the following items:

Utilities		17.00
Electricity		13.00
Water		9.50
Food		180.00
Clothing		20.00
Insurance (Life, automobile, and fire)		23.88
Transportation (Gasoline and bus)		22.00
Education (Lunches)		20.00
Recreation		3.00
Debts (monthly payments)		
Federal Credit Union	(total debt: $4,300.00)	$128.00
Montgomery Wards	(total debt: $ 370.00)	20.00
J. C. Penney's	(total debt: $ 160.00)	15.00
Crews Beggs	(total debt: $ 130.00)	10.00
Medical Bills	(total debt: $ 290.00)	16.00
	TOTAL:	$497.38

9. Because of these prohibitive household expenses, my father is unable to provide my wife and me with support. In fact, he is barely able to support his wife and his other three children on his monthly income. My father is additionally burdened in meeting this responsibility because he is a diabetic and suffers from an ulcer.

10. My wife is very much in need of an adequate nutritional diet because she is nursing a child. Despite the fact that: our income is very low, we receive no support from my parents, my parents will not be claiming me as a tax dependent 1972, we are still unable to receive food stamps because of my being claimed a dependent for tax purposes in 1971. Without this relief, my wife and I will have to conserve our meager funds and deny ourselves adequate

food, clothing and other necessities of life during this most crucial period of our marriage.

/s/ Joe Ben Valdez
JOE BEN VALDEZ

SUBSCRIBED AND SWORN to before me this 31st day of May, 1972 by Joe Ben Valdez.

/s/ (Illegible)
Notary Public

My Commission expires: 5-9-76

[Title Omitted in Printing]

[Filed July 17, 1972]

AFFIDAVIT OF ISABEL M. VALDEZ

STATE OF COLORADO }
COUNTY OF PUEBLO } ss:

Isabel M. Valdez, being duly sworn, deposes and says:

1. I am a plaintiff in the lawsuit. I am 18 years of age and reside at 1114 East 6th Street, Pueblo, Colorado.

2. My household consists of myself, my husband Joe Ben Valdez, 18 years of age, and our infant child, 10 days old.

3. Our total household income is $244.00 a month—$194.00 is received from the Colorado Welfare Department's ADC-U Program, and $30.00 is received from the same source for transportation, expenses incurred by my husband as a participant in the Work Incentive Training Program.

4. Our monthly expenses include the following items:

Rent	$80.00
Electricity	4.00
Food	82.00
Clothing	10.00
Insurance	8.00
Transportation (Gas and Auto Repairs)	45.00
Education (Lunches)	6.00
Recreation	2.00
	$237.00

We are barely able to meet these expenses and often must do without necessities of life or adequate food and clothing. These financial problems have increased lately when I gave birth to my child.

5. Presently more than a third of our monthly budget is spent on food. Food Stamps will be most helpful in reducing this expense, thereby allowing us an adequate nutritional diet and additional funds for clothing, hygenic goods, personal incidentals, etc. According to present standards I believe we could purchase $88.00 worth of Food Stamps coupons each month at a cost of $58.00, thereby saving $30.00 in food cost each month.

6. Despite our desperate need for food relief, our household has been denied food stamps by the Colorado Welfare Department solely because my husband's father, Ben G. Valdez, claimed him as a dependent for Federal Income Tax purposes for the year 1971. I know that he is no longer a dependent and will not be claimed as such in 1972.

7. Ben G. Valdez, my father-in-law, is the head of a five member household, consisting of himself (54 years old), his wife, Rose (53 years old), and his three other children, Nancy (21 years old), Joan (15 years old), and Daniel (17 years old). He is a laborer at the Colorado Fuel & Iron Corporation and earns approximately $450.00 monthly.

8. Ben Valdez's monthly household expenses include the following items:

Utilities		17.00
Electricity		13.00
Water		9.50
Food		180.00
Clothing		20.00
Insurance (Life, automobile, and fire)		23.88
Transportation (Gasoline and bus)		22.00
Education (Lunches)		20.00
Recreation		3.00
Debts (monthly payments)		
Federal Credit Union	(total debt: $4,300.00)	$128.00
Montgomery Wards	(total debt: $ 370.00)	20.00
J. C. Penney's	(total debt: $ 160.00)	15.00
Crews Beggs	(total debt: $ 130.00)	10.00
Medical Bills	(total debt: $ 290.00)	16.00
		$497.38

9. Because of these prohibitive household expenses, my father-in-law is unable to provide my husband and me with support. In fact, he is barely able to support his wife and his other three children on his monthly income. My father-in-law is additionally burdened in meeting these responsibilities because he is a diabetic and suffers from an ulcer.

10. I am very much in need of an adequate diet (nutritional) because I have an infant baby and have special needs. Despite the fact that: Our income is very low, we receive no support from our parents, my husband's parents cannot afford to provide us with support, and my husband's parents will not be claiming him as a tax dependent in 1972,

we are still unable to receive food stamps because my husband's being claimed a dependent for tax purposes in 1971. Without this relief, my husband, my baby and I will have to conserve our meager funds and deny ourselves adequate food, clothing and other necessities of life during this most crucial period of our marriage.

/s/ Isabelle M. Valdez
ISABEL M. VALDEZ

SUBSCRIBED AND SWORN to before me this 31st day of May, 1972 by Isabel M. Valdez.

/s/ (Illegible)
Notary Public

My Commission expires: 5-9-76

[Title Omitted in Printing]

AFFIDAVIT

[Filed July 17, 1972]

STATE OF IOWA
COUNTY OF BLACK HAWK } ss:

I, Robert A. Broderson, age 18, of 309 East Nineth Street, Waterloo, Iowa, being duly sworn, depose and state as follows:

1. That on the 8th day of March, 1972, my wife Beverly and I applied for food stamps at the food stamp office in Waterloo, Iowa. At the time of said application my net earnings were approximately $110.00 per month and my wife had no earnings.

2. At the time of the application we were paying $65.00 per month for rent at 1420 Grant Street, Waterloo, Iowa.

3. That for the tax year 1971 I was claimed as a dependent by my parents, Harold L. and Vanette Broderson, inasmuch as they had provided over fifty per cent of my support.

4. That on December 26, 1971, I married Beverly Brown, age 16, who was also claimed by her parents, Robert E. and Muriel Brown, as a dependent for the tax year 1971.

5. That my wife and I resided with my parents until the end of February, 1972, at which time we established our own home at 1420 Grant Street, Waterloo, Iowa.

6. That I have had conversations with my parents and they understand that they cannot claim me as a tax dependent for the tax year 1972 and that I intend to file my own income tax return along with my wife.

7. That the food stamp office, upon discovering from information that I gave in the application that I had been claimed as a tax deduction in 1971 by someone in another household, refused to issue any food stamps to myself or my wife.

8. That a full and fair hearing was held before Mr. Henry Gering, hearing officer for the Iowa Department of Social Services on the 20th day of April, 1972, and that the Commissioner of the Iowa Department of Social Services ruled on the 24th day of April, 1972, that we were ineligible for food stamps because of the tax dependency rule found in the federal statute and regulations.

9. That my wife is expecting a child on or about July 10, 1972, and that proper nutrition and diet is vital to her.

10. Since being turned down for food stamps we have applied to the Black Hawk County Relief Department and they have issued to us two food orders, one in the amount of $12.00 and one in the amount of $50.00. It is our understanding with that office that this assistance will not be permanent but will be temporary to see when other arrangements can be made to help pay our food bill.

11. Since the turn down and the full and fair hearing, I have obtained another job working at Consolidated Service Station as an attendant. My earnings will vary but I expect to make between $25.00 to $27.00 a week. Also we have moved into another apartment where the rent will be $75.00 per month.

12. We have no medical insurance or arrangements for the payment of the expenses connected with the birth of the child expected in July, 1972, and I assume I will have to be able to pay this out of my weekly wages.

/s/ Robert A. Broderson
ROBERT A. BRODERSON

SUBSCRIBED and sworn to before me this 31st day of May, 1972.

/s/ Donna M. Fruchlenicht
Notary Public

[Title Omitted in Printing]

[Filed July 17, 1972]

AFFIDAVIT

STATE OF HAWAII }
COUNTY OF MAUI }

I, KRISTI SCHULTZ, being first duly sworn, depose and say:

That I am 19 years of age and am an adult under the laws of the State of Hawaii. I live in Peahi, Maui, Hawaii with a friend and her two children aged two and three years old. I have no income from any source. The food I eat is donated to me by my friend out of the allocation of food stamps she receives for herself and the two children.

In August of 1971 I began to receive food stamps which were issued by the Maui Branch office of the Hawaii Department of Social Services and Housing. At that time I paid $.50 for $27.50 worth of stamps.

In November 1971 my allocation of food stamps was terminated on the grounds that my parents were intending to declare me as a tax dependent for the year 1971, even though all support from them had ceased as of June of that year. At the time my food stamps were terminated I was informed by my food stamp worker that if I got married to my fiance we would be eligible for food stamps as a family unit. Relying on this information and desparately in need of food my fiance and I were married on January 19, 1972.

Immediately following our marriage my husband and I applied for a food stamp allocation as a family unit. However our application was denied on the grounds that one member of the household, myself, had been declared as a tax dependent of another household for the previous year. My parents have informed me that they will not claim me as a dependent for income tax purposes for 1972.

Because I was denied food stamps and was without any means of support, I was forced to live off of what I could find growing near my home. Accordingly, for a period of approximately 4 weeks I ate only wild sweet potatoes and water. As a result of this limited diet I became seriously malnourished and subsequently became ill for a period of

approximately 4 months. The emotional strain on my husband and me cause by this deprivation was a primary factor leading to our divorce in May of 1972.

I declare, under penalty of perjury, that the foregoing is true and correct.

executed on June 19, 1972, at Wailuku, Maui, Hawaii.

/s/ Kristi Schultz
KRISTI SCHULTZ

Subscribed and sworn to before
me this 19th day of June, 1972.

Ema R. Murphy
Notary Public, Second Judicial
Circuit, State of Hawaii.
My Commission expires: 2/19/75.

[Title Omitted in Printing]

[Filed July 17, 1972]

AFFIDAVIT OF LEONILA NEVAREZ

STATE OF TEXAS }
COUNTY OF BEXAR } ss

LEONILA NEVAREZ, being duly sworn, deposes and says:

1. I am a plaintiff in this lawsuit. I am 38 years old and of Mexican-American descent. I am a permenent [sic] resident alien of the United States and reside at 626 Briggs Avenue in San Antonio, Bexar County, Texas.

2. My household consists of six persons, to wit: myself and the following five children:

Larry Rene, my son, 18 years old;
Alma Linda, my daughter, 17 years old;
Marina, my daughter, 15 years old;
Rocky James, my son, 4 years old; and
Joseph Daniel, my son, 9 months old.

3. I am married, and my husband's name is Raymond Nevarez. He is 46 years old, and he is not living in our household. He deserted me and the children last March, and he does not contribute, in any way, toward our support. His whereabouts are unknown to me, although I have made a diligent effort to ascertain same.

4. My household's total monthly income is $215.00. This amount is attributed to the combined earnings of my two oldest children, who are presently employed.

5. My household's monthly expenses include the following:

Appliance and furniture payments	$ 30.00
Rent	60.00
Food	41.00
Utilities (gas, electricity and water)	19.50
Telephone	7.50
Transportation (bus fares)	22.00
School costs	2.50
Medicine and drugs	4.00
Clothing	15.00
Hygenic items and recreation	3.75
	$205.25

6. My household budget is a very tight one, and I am barely able to maintain my family and provide for the above-listed necessities. I have been able to do this, thus far, primarily because of my relatively low food costs, which has been kept to a minimum because my household has used food stamps. In the past, I have been able to purchase $144.00 worth of food each month with food stamps that have cost me $21.00, thereby saving me $123.00 in monthly food expenses—a sum equivalent to more than 50% of my household's total monthly income. With an additional expenditure of $20.00 to supplement my monthly food stamp purchases, I have been able to feed myself and my children adequately.

7. Recently, I was told by the Texas Department of Public Welfare that my children and I could no longer receive food stamp assistance unless my husband, Raymond Nevarez, filled out and returned certain forms regarding his claiming or not claiming our children as dependents for income tax purposes. As I do not know where my husband is and cannot locate him, I have not been able to comply with the Welfare Department's demands. To the best of my knowledge, however, my husband has not filed an Income Tax return since 1968. I told the Welfare Department this but was informed that it did not make any difference and that they had to follow the regulations.

8. I appealed the Welfare Department's decision denying my family food stamp assistance on June 5, 1972. A true and correct copy of my petition for an appeal hearing is attached hereto, and marked as Exhibit A, and incorporated herein for all purposes. On or about June 12, 1972, I was notified as to my appeal hearing. A true and correct copy of such notification is attached hereto, and marked as Exhibit B, and incorporated herein for all purposes. I attended the appeal hearing, and my representative and I attempted to explain my predicament, and the effect denying me food stamps would have on my family. On or about June 22, 1972, I received a copy of the Hearing Officer's decision, which sustained the Agency's action in my case. A true and correct copy of this decision is attached hereto, and marked as Exhibit C, and incorporated herein for all purposes.

9. The only effect my husband's Income Tax returns (if any) could possibly have on my receiving food stamps is

if he claimed my oldest son, Larry, as a dependent. According to the Welfare Department, since Larry is 18 years old, such a claim would render my entire household ineligible for food stamps under the Food Stamp Act's "tax dependency" provision. Therefore, since I do not know my husband's whereabouts, the only way that my family can receive food stamps is if I force Larry to leave the house. Should I do this, there would be no child age 18 or older living in our household and therefore the "tax dependency" provision would not disqualify us for food stamps.

10. My household is a poor one. We receive no support from my husband, and my oldest son, Larry, provides us with more than half of our financial support. Yet if he remains in our home, my family cannot receive food stamp assistance. I cannot force my own child to leave his home, nor can we get along without the financial support he provides for us. This means that we will not be able to have the food stamp assistance we received in the past and without it I fear my growing children will be faced with the horrors of inadequate diets leading to hunger and malnutrition.

/s/ Leonila Nevarez
LEONILA NEVAREZ

Subscribed and sworn to before me this 29th day of June, 1972.

/s/ Martha Jamez
Notary Public in and for
Bexar County, Texas

EXHIBIT A

Form 17
November, 1971

State of Texas
Department of Public Welfare

PETITION FOR FAIR HEARING

TO: Mr. James C. Parker,
Hearing Officer
State Department of
Public Welfare

Case Name Nevarez, Leonila
Category HPA
Case No. 28947
Region No. 004
Race Mex-Am.
County Bexar
Mailing Address 626 Briggs
San Antonio, Texas 78211

PROGRAM

Check *One:*

- ☐ Money Payment
- ☐ Medical Assistance
- ☒ Food Stamps
- ☐ Commodities
- ☐ Services
- ☐ WIN

Basis for Dissatisfaction
Check *One* or more:

- ☐ Denial of Application
- ☒ Denial of Assistance
- ☐ Amount of Assistance
- ☐ Reduction of Assistance
- ☐ Level of Nursing Care Approved
- ☐ Decision of Medical Review Team Regarding Incapacity
- ☐ Delay in Completing Application
- ☐ Delay in Raising Assistance
- ☐ Delay in Rendering Services
- ☐ Refusal to Act
- ☐ Opportunity to Apply Not Facilitated
- ☐ Decision to Refer for Employment or Training
- ☐ Decision *Not* to Refer for Employment or Training

☐ Decision Contrary to Claimant's Preference With Respect to Services

---

This request made under 15 days Fair Hearing Procedure?
Yes ☒ No ☐

Check one:

☒ Appellant wishes to have an *appeal hearing* so that he may present evidence and/or information concerning his situation.

☐ Department representative has agreed to assist Appellant in filing a written *statement* regarding the case situation and no formal hearing will be necessary.

Give date and medium, appellant clearly expressed a desire to appeal.

Date June 5, 1972

Medium Bexar County Legal Aid Assoc.

Department Representative Gabriel Puente, Jr.

Budgeted Job No. 004-70-C-01-424

Office Headquarters 925 So. Alamo

Case Name: Nevarez, Leonila
FS #28947
Region: 004
County: Bexar

Point of Issue: Tax Dependency Requirement.

Policy: Food Stamp Manual Section 2262, (par. 1 & 2263 par. 5 state:

"Any household which includes a tax dependent, as defined in this manual, will not be eligible to participate in the program —."

"Because the taxpayer household is the sole source of this information, the failure of the taxpayer household to complete and return this

questionnaire will be grounds for denying participation for tax dependent households."

Summary: Client has an 18 yr. old son living in her household who meets the definition of a tax dependent. She was asked to give us her husband's address so that we can mail the tax dependent questionnaire to him. She states she does not know husband's whereabouts and husband's parole officer has not heard from him either. She went to Legal Aid for advise. They advised her to appeal.

Gabriel Puente, Jr. WS Tech. II
June 5, 1972

EXHIBIT A

EXHIBIT B

STATE DEPARTMENT OF PUBLIC WELFARE

The State of Texas

Form 18
July, 1971

ACKNOWLEDGMENT AND NOTICE OF FAIR HEARING

Mrs. Leonila Nevarez
626 Briggs
San Antonio, Texas

Category: Food Stamps
Case No.: 28947

Dear Mrs. Nevarez:

The Department of Public Welfare has received your request for a fair hearing in which you asked for a review of the recent action (or failure to act) on your case.

You are, therefore, advised that if you wish to avail yourself of this opportunity of appearing in person before a representative of the Department you may do so

at 1:30 o'clock PM., June 19, 1972
at Welfare Office (Guadalupe Community Center)
1801 W. Durango Street

An informational sheet entitled "Statement of Appellant's Rights in Hearing Proceedings" is included with this letter to help you understand the appeal procedure.

In the event it is not possible for you to keep this appointment, please use the enclosed statement and envelope to notify me of the reason(s) why. If the time and place indicated above are suitable, please do not return the enclosed statement.

You may be assured that careful consideration will be given to all the facts concerning this situation.

STATE DEPARTMENT OF
PUBLIC WELFARE

By: James C. Parker
Hearing Officer
James C. Parker
Type Name of Hearing Officer
P.O. Box 2410, San Antonio, Texas
Type Address of Hearing Officer

DATE: June 12, [1972]

cc: Worker 70-01
Supervisor Unit 70
Reports and Statistics 042-0

EXHIBIT C

Mrs. Leonila Nevarez
626 Briggs
San Antonio, Texas

Dear Mrs. Nevarez:

I have carefully reviewed your Appeal based on the denial of your application for participation in the Food Stamps Program.

From facts and evidence presented at the Hearing, it was determined that the involved caseworker had properly and correctly applied Agency's policies and procedures as described in Food Stamps Manual, Section 2263 wherein it is stated that a tax dependent household will not be certified until the dependent income and tax dependency questionnaire, signed by the taxpayer or his spouse, has been received by the certifying office of the tax dependent.

The action of the Agency is Sustained. The attached copy of Form 21 is your official record of this Appeal.

Sincerely yours.

/s/ James C. Parker
JAMES C. PARKER
Appeals Analyst

JCP/mlc
cc: Worker 70-01
Supervisor Unit 70
Reports and Statistics 042-0
Legal Aid Association

State of Texas
Department of Public Welfare

Form 21
July, 1971

OFFICIAL RECORD OF FAIR HEARING

1. *Identification*

Appellant Leonile Nevarez Program Food Stamps Category- Food Stamps Case No. 28947

Appellant _____ Program _____ Category- Case No. _____

County Bexar Region No. 004 Fair Hearing No(s). _____

2. *Persons Present for Fair Hearing:*

Name	Capacity
1. Leonila Nevarez	Appellant
2. John A. Cowan	Representative
3. James C. Parker	Hearing Officer
4.	
5.	
6.	

3. *Principal Issue In Hearing Designate By Code*

Code: L

Specify: (Complete Only if Codes G or T are used)

4. Representation of Appellant During Hearing
Code: A

5. *Nature of Request*

XX Appellant requested hearing as a challenge of fact or judgment

__ Appellant requested hearing as a protest of agency policy

6. *Record of Action Taken*

Date of Departmental Action From Which Appeal is Made _____

Type Action DENIED From _____ To _____ Effective _____

Type Action _____ From _____ To _____ Effective _____

Code No. and Principal Reason: Code (11) Unable to establish eligibility due to tax dependents in the household

Date of Request for Fair Hearing 6-5-72

Fair Hearing Held At 1:30 P.M. (Time) 6-19-72 (Date) 1801 W. Durango (Place)

8. Hearing Officer's Decision and Explanation

The purpose and scope of the Food Stamp Program was explained to the appellant in that it was to encourage and enable low income households to increase their level of nutrition; and to carry out this purpose, the Program provides for the issuance of Food Coupons to *eligible* households in line with their normal food requirements and purchases. The value of Food Coupons issued to each eligible household is determined by an established scale based on the household's available income and the number of members in the household.

Appellant and her Representative was advised that the Food Stamps Program rules and regulations were revised effective 5-1-72 and that the following certification procedures would have to be followed.

Section 2263—TAX DEPENDENT APPLICATION

Paragraph 1: When an application shows a tax dependent who is claimed by another household which is not certified as being eligible for the Food Stamp Program or Food Distribution Program, the tax dependent household will be determined ineligible to participate in the Food Stamp Program.

Paragraph 3: "When an application shows a tax dependent who is claimed by a household certified to participate in a Food Assistance Program, the food stamp office of the tax dependent will mail a Dependent Income and Tax Dependency Questionnaire and cover letter (Form 819), directly to the taxpayer household. This questionnaire need not be mailed to the taxpayer except on initial certification and when circumstances indicate a change in the amount of support.

Paragraph 4: The taxpayer household will return the questionnaire to the Food Stamp Office where the tax dependent household applied. The tax dependent household will not be certified until the questionnaire, signed by the taxpayer or his spouse, has been received by the certifying office of the tax dependent. This questionnaire must be mailed directly to the certifying office by the taxpayer household.

(Continued)

STATE DEPARTMENT OF
PUBLIC WELFARE

By: James C. Parker
Hearing Officer
James C. Parker
Type Name of Hearing Officer
P.O. Box 2410, San Antonio, Texas
Type Address of Hearing Officer

Date of Decision: 6-19-72

Paragraph 5: "Because the taxpayer household is the sole source of this information, the failure of the taxpayer household to complete and return this questionnaire will be grounds for denying participation for tax dependent households."

Evidence presented at the Hearing indicates that the appellant did see her spouse last month and that she did obtain his local address from his parole officer but she also stated that she endeavored to contact him at this address but was unable to do so. It was also learned that 2 children in this household group are employed with an approximate monthly combined earnings of $215.00.

Consultation with higher echelon personnel in the Food Stamp Program was made and it was verified that in their opinions the Section 2263 previously quoted does apply.

The Point at Issue was whether or not the appellant meets Food Stamps eligibility requirements.

The action of the Agency is Sustained in that it was determined that the involved caseworker had properly and correctly applied Agency's policies and procedures as described in the Food Stamp Manual, Section 2263.

APPENDIX A

[to Plaintiffs' Memorandum of Law, filed July 17, 1972]

STATE OF COLORADO
DEPARTMENT OF SOCIAL SERVICES

In the Matter of Appeal No. 2347 from the Decision of the Pueblo County Department of Public Welfare denying eligibility for Food Stamp assistance to Mr. Joseph Valdez	Initial Decision of Hearing Officer

The above-captioned matter came on for hearing before James E. Dotson, Hearing Officer, State Department of Social Services in the offices of the Pueblo County Department of Public Welfare, Courthouse, Pueblo, Colorado, on March 28, 1972, at 9:00 A.M.

Mr. Robert Trunk, Attorney at Law, appeared in behalf of the Pueblo County Department of Public Welfare, and Mr. Joe T. Ulibarri, Attorney at Law, Pueblo County Legal Aid Services, appeared on behalf of Mr. Joseph Valdez.

Hereinafter Mr. Joseph Valdez will be referred to as the "appellant"; the Pueblo County Department of Public Welfare will be referred to as the "County Department"; and the regulations of the State Department of Social Services referred to herein are from Staff Manual, Volume IV, and shall be cited by their section number, title and effective date.

FINDINGS OF FACT

Based upon all of the evidence presented at the hearing, the Hearing Officer makes the following findings of fact:

1. The appellant applied for ADC-U and food stamp assistance on December 20, 1971. He was approved for ADC-U with a grant of $194 per month, but was denied food stamp assistance.

2. For the year 1971 the appellant, who is more than 18 years of age, was claimed by his father as a tax dependent. The father's household is not certified for food stamp assistance.

3. The appellant would be otherwise eligible for food stamp assistance except for his status as a tax dependent in 1971.

4. The appellant's household is a low-income household.

DISCUSSION AND CONCLUSIONS

Section B-4000.011—*Purpose,* effective November 1, 1971, sets forth the policy of Congress as declared in the Food Stamp Act and provides in part as follows:

> '. . . The Congress hereby finds that the limited food purchasing power of low-income households contribute to hunger and malnutrition among members of such households."

and,

> "To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to purchase a nutritionally adequate diet through normal channels of trade."

It seems rather clear that it was the intent of Congress to provide food stamp assistance to all low-income households so that the inhuman consequences of malnutrition could be avoided.

Section B-4020—*Eligibility Requirements,* effective November 1, 1971, provides in part as follows:

> "Assistance households will be determined to be eligible to participate in the program without regard to the income and resources of the household members. Said households must meet all other eligibility standards."

This regulation recognizes that assistance household fall in the category of low-income households without proof of that which is obvious. Such households are automatically considered eligible insofar as income and resources are concerned.

Section B-4222.4—*Rules Concerning Tax Dependents,* effective November, 1971, provides in part as follows:

> "Any household which includes a tax dependent, as above defined, will not be eligible to participate in the program unless the household claiming the tax dependent is certified as being eligible for participation in the food stamp program or food distribution program and the household

in which the tax dependent lives meets all other eligibility criteria."

The rule, in a separate portion, defines a tax dependent as:

> "For purposes of these rules, a tax dependent means a person who is 18 years of age or older, who is claimed as a tax dependent for Federal income tax purposes by parent or guardian, and who is living apart from the household of such parent or guardian. A person will be considered a tax dependent for the period claimed, and for a period of one year after the expiration of such tax period."

Unfortunately, the appellant falls squarely within this definition of tax dependent. He is 18 years of age; he was claimed by his father as a tax dependent in 1971; and the father's household is not certified for food stamp assistance. Notwithstanding the fact that he is on public welfare assistance, he must be found ineligible because he was a tax dependent and this is true even though such finding will defeat the expressed policy of Congress when it passed the Food Stamp Act.

The rules of the State Department of Social Services relating to food stamp eligibility are based upon the rules prescribed by the Food and Nutrition Service, U. S. Department of Agriculture. Those rules have been reviewed by the Hearing Officer, and when they are applied, the same result must be had. In 7 CFR 271.3(4)(d), it is stated:

> "'*Tax dependency.*' Any household which includes a member who has reached his 18th birthday and who is claimed as a dependent for federal income tax purposes by a member of a household which is not certified as being eligible for food assistance shall be ineligible to participate in the program during the tax period such dependency is claimed and for a period of one year after expiration of such tax period."

INITIAL DECISION

IT IS THEREFORE the Initial Decision of the Hearing Officer that the County Department properly applied the regulations of the State Department of Social Services when it denied food stamp assistance to the appellant.

This Initial Decision shall be effective and binding upon

the appellant and the Pueblo County Department of Public Welfare three days after the date set forth below in the Certificate of Mailing. Section 4725.2—*Decision, Notification, and Right of Appeal*, effective November 1, 1971.

STATE DEPARTMENT OF
SOCIAL SERVICES

James E. Dotson
JAMES E. DOTSON, Hearing Officer

Dated: At Denver, Colorado
April 6, 1972

CERTIFICATE OF MAILING

I certify that I have mailed a true and correct copy of the above Initial Decision of Hearing Officer to Mr. Joseph Valdez, 1114 East Sixth Street, Apartment 1, Pueblo, Colorado 81004, by depositing same in the U. S. Mail, postage prepaid, on this 7th day of April, 1972, at Denver, Colorado.

Doris R. Sumnicht
DORIS R. SUMNICHT
Secretary to the Hearing Officer
State Department of Social Services

[Title Omitted in Printing]

[Filed July 20, 1972]

AFFIDAVIT

Edward J. Hekman, being first duly sworn on oath, deposes and says that:

1. I am Administrator of the Food and Nutrition Service of the United States Department of Agriculture. Under the general direction of the Assistant Secretary of Agriculture for Marketing and Consumer Services, I am responsible for the administration of the Food Stamp Program.

2. The purpose of this affidavit is to show that the issuance of a temporary restraining order in this case would have the effect of substantially changing existing criteria of eligibility for participation in the Food Stamp Program. Contentions similar to those of the plaintiffs were given full administrative consideration and were not adopted as more fully set forth in the statement of the Assistant Secretary of Agriculture for Marketing and Consumer Services which was published in the Federal Register on October 16, 1971 (36 F.R. 20145). The regulations of which plaintiffs now complain became effective on July 29, 1971, almost one year ago, and have been implemented in all of the states which participate in the Food Stamp Program, except Vermont.

3. On April 16, 1971, there was published in the Federal Register (36 F.R. 7240) a notice of proposed rulemaking which invited the comments, suggestions, or objections of interested persons with respect to the proposed revision of the regulations governing the Food Stamp Program. The revision of the regulations was necessitated by the amendments to the Food Stamp Act of 1964 (7 U.S.C. 2011-2025) which were enacted by Public Law 91-671 (84 Stat. 2048), approved January 11, 1971. Among those amendments was the amendment in issue which made ineligible for the program "any household which includes a member who has reached his eighteenth birthday and who is claimed as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household." Thus, the proposed regulations included language to effectuate this change in the enabling legislation.

4. Numerous comments concerning this proposal were received. However, it was concluded that, in order to carry

out the intent of the legislation, the regulation to be promulgated would have to be substantially in the form of that issued on July 29, 1971.

5. Since publication of the revised program regulations on July 29, 1971, the Food and Nutrition Service has worked diligently, along with the agencies of the several States responsible for the administration of the program in such States to implement the various program changes, including the revised eligibility standards, required by the 1971 amendments to the Food Stamp Act of 1964. Some of the States implemented the revised eligibility standards as long ago as November 1971, and all of the States participating in the program have now put such standards into effect, except Vermont.

6. The change challenged here is only one of a number of changes in the program which have been made by all of the participating States to bring program operations into conformance with the substantially amended statute and revised regulations.

7. In connection with the merits of this action:

(a) it has not been possible, within the period of time between the filing of this action and the hearing on the plaintiffs' motion for a temporary restraining order, to obtain from the States all of the facts necessary for making a determination as to whether or not the plaintiffs, or any of them, have been properly excluded from participation in the program by a State agency under the provisions of section 5(b) of the Food Stamp Act of 1964, as amended (7 U.S.C. 2014(b)), and the program regulations issued thereunder.

(b) The action of the State agencies in denying participation in the Food Stamp Program to some of the plaintiffs under the so-called "tax dependent" provision of the Act became final some months ago, as early as November 1971.

8. The issuance of a Temporary Restraining Order would disrupt the orderly local administration of the program in each of the States involved without there having been any consideration of the merits of the litigation, and would change the status quo with respect to the plaintiffs in this action.

/s/ Edward J. Hekman
Administrator

Subscribed and sworn to before me a Notary Public in and for the District of Columbia this 19th day of July, 1972.

/s/ Sandra D. Foster
District of Columbia
Notary Public

My Commission Expires
Sept. 30, 1975

[Title Omitted in Printing]

[Filed July 31, 1972]

MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

COME NOW the defendants by their attorneys, the undersigned attorneys and respectfully moves this Court to dismiss this action or in the alternative for summary judgment on the grounds that there is no genuine issue as to any material fact and defendants are entitled to judgment as a matter of law.

In support of this motion, the Court is respectfully referred to the affidavit of Edward J. Heckman, previously filed in this case as well as the attached affidavit of Howard P. Davis, both which are incorporated herein and made a part hereof together with defendants' Memorandum of Points and Authorities in support of defendants' Motion to Dismiss or in the Alternative for Summary Judgment.

Respectfully submitted,

/s/

HARLINGTON WOOD, JR.
Assistant Attorney General

/s/

HAROLD H. TITUS, JR.
United States Attorney

/s/

HARLAND F. LEATHERS

/s/

PETER J. P. BRICKFIELD
Attorneys, Department of Justice

[Title Omitted in Printing]

[Filed July 31, 1972]

AFFIDAVIT

Howard P. Davis, being first duly sworn on oath, deposes and says that:

1. In the absence of the Administrator, I am Acting Administrator of the Food and Nutrition Service of the United States Department of Agriculture. Under the general direction of the Assistant Secretary of Agriculture for Marketing and Consumer Services, I am, as Acting Administrator, responsible for the administration of the Food Stamp Program.

2. The Food Stamp Program is carried out under the provisions of the Food Stamp Act of 1964, as amended (7 U.S.C. 2011-2025). The purpose of the program is to utilize the nation's abundance of food in order to raise levels of nutrition among certain low-income households. In accordance with the statute, eligible households may exchange an amount of money determined to be a "reasonable investment" for food stamps which are of a greater monetary value. The difference between a household's "purchase requirement"—the amount of money it must pay for its coupon allotment, determined on the basis of its income—and the "coupon allotment"—the value of the food stamps it receives, determined on the basis of the number of persons in the household—is the Federal contribution in free food stamps to the food purchasing power of the household.

3. Early in January 1971 a number of amendments to the Food Stamp Act of 1964 became effective. Among the changes made at that time was the addition of the so-called "tax dependent" provision which is in issue in this case. This amendment makes any household ineligible to participate in the Food Stamp Program if the household includes a person 18 years or older who is claimed as a tax dependent by a taxpayer who is a member of an ineligible household. This change in the law, primarily intended by Congress to deny program benefits to non-needy college students, was inserted into the Food Stamp Act of 1964 by Public Law 91-671 (84 Stat. 2049). It reads as follows:

Any household which includes a member who has reached his eighteenth birthday and who is claimed as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household, shall be ineligible to participate in any food stamp program established pursuant to this Act during the tax period such dependency is claimed and for a period of one year after expiration of such tax period. (7 U.S.C. 2014(b)).

4. The regulations governing the Food Stamp Program also contain a "tax dependent" provision similar to that added to the Food Stamp Act in 1971. The regulations provide as follows:

Tax Dependency. Any household which includes a member who has reached his 18th birthday and who is claimed as a dependent for Federal income tax purposes by a member of a household which is not certified as being eligible for food assistance shall be ineligible to participate in the program during the tax period such dependency is claimed and for a period of 1 year after expiration of such tax period. (7 C.F.R. 271.3(d)).

5. The policy of this Department, as set forth in the instructions furnished to the agencies of the several States which participate in the Food Stamp Program, reflects the provisions of the statute and the program regulations referred to in the preceeding paragraphs. In this connection, the document entitled "FNS (FS) Instruction 732-1—Food Stamp Certification," reads as follows, in section III, F:

Tax Dependent means a person who is 18 years of age or older who is claimed as a tax dependent for Federal income tax purposes by a parent or guardian and who is living apart from the household of such parent or guardian. A person will be considered a tax dependent for the period claimed and for a period of one year after expiration of such tax period. For example, if a person is claimed as a dependent in March of 1972 for the 1971 tax year, he will be ineligible until January 1973 unless the taxpayer household becomes certified for food assistance. . . .

* * *

Tax Dependent Application. When an application

shows a tax dependent who is claimed by another household which is not certified as being eligible for the Food Stamp Program or Food Distribution Program, the tax dependent household will be determined ineligible to participate in the Food Stamp Program. Under normal circumstances, a determination of tax dependency can be made from the completed Application submitted by the household.

• • •

6. As the statement in the instructions quoted above indicates, the application for participation in the program contains information with respect to the tax dependent status of member(s) of the household. FNS (FS) Instruction 732-1 requires that the State agencies use an application form substantially in conformity with Exhibit A to such instruction. Exhibit A requires that applicants respond to the following questions with regard to tax dependency:

a. Has anyone in the household been claimed as a tax dependent for Federal income taxes during the last year or this year by a person who is not living in the household?

b. If yes, give the name of the tax dependent and the name and address of the taxpayer.

c. Is the taxpayer certified to participate in the Food Stamp or Food Distribution Programs?

7. In the administration of the Food Stamp Program, this Department has, therefore, complied explicitly with the mandate with regard to tax dependency set forth in section 5(b) of the Food Stamp Act. If the information provided by an applicant household for the Food Stamp Program disclose that there is in such household a member who meets the "tax dependent" criteria established by the statute, that household is determined to be ineligible for participation in the program.

8. Section 10(e)(6) of the Food Stamp Act (7 U.S.C. 2019 (e)(6)) requires that each State agency shall provide for the granting of a fair hearing and a prompt determination thereafter to any household aggrieved by the action of a State agency under any provision of its plan of operation as it affects the participation of such household in the Food

Stamp Program. The regulations governing the program implement this statutory provision. (7 C.F.R. 271.1(o)). However, in the case of households which have initially been determined to be ineligible for participation in the program on the basis of tax dependency, there are no factual issues to be presented or challenged by the household at such a hearing, other than the issue of whether or not a member of the household has been claimed as a dependent child by a taxpayer who is not a member of a household eligible for food assistance (a fact the household, in most cases, already will have disclosed in its application). If a household states that if has such a tax dependent member, the household is, in conformity with the Food Stamp Act, the program regulations, and the instructions of FNS governing the program administration by State agencies, determined to be ineligible.

9. The Federal income tax laws provide generally that in order for a taxpayer to claim a child as a dependent, the taxpayer must have furnished over half of the child's support. A taxpayer who claims a child as a dependent must, therefore, have made a substantial contribution to the child's living expenses.

10. The legislative history of the 1971 amendments to the Food Stamp Act discloses that Congress intended to exclude tax-dependent college students from the Food Stamp Program, but the "tax dependent" provision of the statute applies likewise to households which do not include such students. While the overall purpose of the Food Stamp Act is to furnish food assistance to low-income households, it is reasonable for Congress to conclude that a taxpayer who is not needy and who claims a member of a low-income household (whether or not he is a student) as a tax dependent is in a position to provide, and has provided, financial assistance to such household. Federal resources are thereby freed for use in aiding those households which have no other sources to look to for food assistance.

11. There is nothing in the "tax dependent" provision of the Food Stamp Act or the similar provision of the program regulations which requires that household members forego their freedom to associate in order to receive food stamps. These provisions are eligibility requirements similar to the income standards of eligibility established under the program. There are many households which, on the basis of

income, would become eligible for the program if one of the breadwinners of the household were not in the household. But it could hardly be argued that, therefore, the income eligibility standards infringe on the household members' freedom to associate.

12. There is nothing in the "tax dependent" provision of the Food Stamp Act or the similar provision of the program regulations which requires that household members forego their freedom to travel in order to receive food stamps. To the contrary, section 10(c) of the Food Stamp Act (7 U.S.C. 2019(c)) and the related provision of the program regulations (7 C.F.R. 271.4(a)(6)) provide for the continuation of certification for 60 days when a participating household moves from one food stamp project area to another. Further, the program regulations (7 C.F.R. 271.1(e)) provide that no citizenship or durational residency requirement shall be imposed by any State agency as a condition of program eligibility.

13. As applied, and as a practical matter, the "tax dependent" provision of the Food Stamp Act making a household ineligible during the tax period such dependency is claimed and "for a period of one year after expiration of such tax period" is not unreasonable. For example, with respect to a household which applied for participation in the program on July 1, 1972, if a taxpayer claimed a member of such household as a dependent in April of 1972 for the tax period 1971, the household would be ineligible only through December 31, 1972. Further, it ordinarily cannot be determined at the time of certification whether or not a member of a household will be claimed at some time during the next year as a dependent for the then current tax period. If it were not for the statutory provision for exclusion "for a period of one year after expiration of such tax period," in many cases there would be no practicable means to apply the "tax dependent" exclusion. In practice, this provision may be expected actually to exclude the tax dependent household for only one year and is a necessary adjunct to the program to effectuate the policy established by Congress.

14. It is the general purpose of the Food Stamp Act to raise levels of nutrition among low-income households. It is not the policy of Congress, however, to provide food assistance to all low-income households. The 1971 amend-

ments to the Food Stamp Act (P.L. 91-671) exclude certain households from eligibility for participation in the program, even though they may be needy. In addition to "tax dependent" households, certain households which include an able-bodied adult who fails to register for employment or who refuses to accept employment are made ineligible for the program. (7 U.S.C. 2014(c)). There is no establishment of an irrebuttable presumption that all households falling within these categories are not needy. There was rather a judgment by Congress that food aid should not be extended under the Act to households which are needy because members refuse to accept available work, or to households which have other available sources of financial assistance.

15. Under the statutory provisions referred to in the preceeding paragraph, the entire household is ineligible for the program if any member thereof falls within the "tax dependent" or "work requirement" provisions. Under the Food Stamp Program, all of the members of the household are taken into consideration for, among other things, determination of household income and resources, as well as the size of the household's coupon allotment and the amount it must pay for the allotment. For program purposes, the household is considered as a unit. By statutory definition, where more than a single person is involved, a household is a group of individuals "living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common." (7 U.S.C. 2012(e)). Since the concept of "household" adopted by Congress contemplates the sharing of a common table, an approach to certification which would make ineligible only an individual member of the household would be inconsistent with the entire statutory and administrative scheme of the program. Making ineligible, because of tax dependency, only the dependent himself would mean, as a practical matter, that such person would probably share the smaller quantity of food which would be made available under the program to the balance of the household. And such ineligibility would have the anomalous result of reducing the household's purchase requirement because of the exclusion from the household's income, for program purposes, of the income of the very person who may be a major contributor to the household's budget. Therefore, the policy of determining program

eligibility on a household unit basis is not only reasonable, but is essential to program administration as contemplated by the Food Stamp Act.

16. During May 1972, the latest month for which complete statistics are available, approximately 11,850,000 persons were receiving food assistance under the Food Stamp Program.

17. No information is presently available to the Department of Agriculture on which to base an estimate of the number of households or persons otherwise eligible for the program who have been determined to be ineligible for participation because of the tax dependency provision of the Food Stamp Act.

Howard P. Davis
Acting Administrator

Subscribed and sworn to before a Notary Public in and for the District of Columbia this 27th day of July, 1972.

Sandra D. Foster
Notary Public
District of Columbia

My Commission Expires Sept. 30, 1975

[Title Omitted in Printing]

[Filed July 31, 1972]

STATEMENT OF MATERIAL FACTS AS TO WHICH DEFENDANTS' CONTEND THERE IS NO GENUINE ISSUE

1. The Food Stamp Act (7 U.S.C. 2011 *et seq.*) of 1964 established the Food Stamp Program to permit those households with low incomes to receive a greater share of the Nation's food abundance.

2. Eligibility for food stamps is and always has been on a "household" basis.

3. On January 11, 1971, the definition of eligibility for the Food Stamp Program was changed by statute. The new definition included a tax dependency provision.

4. The Uniform National Eligibility Standards as provided by the Act state:

> • • • Any household which includes a member who has reached his eighteenth birthday and who is claimed as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household, shall be ineligible to participate in any food stamp program established pursuant to this chapter during the tax period such dependency is claimed and for a period of one year after expiration of such tax period.

5. Information with respect to individuals who are claimed as a dependent child for Federal income tax purposes is provided by the applicant for Food Stamps.

6. All Applicants for Food Stamps are entitled to a Fair Hearing on factual issues concerning their eligibility.

7. Contentions similar to those of the plaintiffs were given full Administrative consideration and were not adopted as fully set forth in the statement of the Assistant Secretary of Agriculture for Marketing and Consumer Service, which was published in the Federal Register on October 16, 1971 (36FR20145). (Heckman affidavit ¶ 2).

8. The implementing regulations became effective on July 29, 1971 (Heckman affidavit ¶ 2).

9. Plaintiffs allege that they are groups of individuals

who are needy and reside in various States and jurisdictions.

10. Defendants are the Department of Agriculture and the officials thereof who are currently responsible for the administration of the Food Stamp Program.

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[Title Omitted in Printing]

[Filed July 31, 1972]

Motion for Summary Judgment

Plaintiffs, pursuant to Rule 56 of the Federal Rules of Civil Procedure, upon their Complaint, their affidavits (filed with the temporary restraining order and preliminary injunction motions), their memorandum (in support of a temporary restraining order and preliminary injunction), and the oral argument presented in open Court, respectfully move for a summary judgment.

In support thereof, plaintiffs would show this Court that there are no material issues of fact in controversy in this litigation. Since neither the plaintiffs nor the defendants have any disagreement on the facts in this case, a summary judgment is appropriate.

Respectfully submitted,

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The Per Curiam Memorandum and Final Order is printed at J.S. App. A.

The Notice of Appeal is printed at J.S. App. B.

SUPREME COURT OF THE UNITED STATES

No. 72-848

UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL.,
APPELLANTS,

v.

LULA MAE MURRY ET AL.

APPEAL from the United States District Court for the District of Columbia.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

February 20, 1973

☆ U.S. Government Printing Office: 1973—497-293/571

In the Supreme Court of the United States

OCTOBER TERM, 1972

No.

UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL., APPELLANTS

v.

LULA MAE MURRY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the three-judge district court (App. A, *infra*) is not yet reported.

JURISDICTION

The opinion and judgment of the three-judge district court (App. A, *infra*) was entered on August 14, 1972. A notice of appeal to this Court (App. B, *infra*) was filed on September 12, 1972. On November 2, 1972, the Chief Justice extended the time for docketing the appeal to and including December 11, 1972. The jurisdiction of this Court is conferred by 28 U.S.C. 1252 and 1253.

490-578—72——1

QUESTION PRESENTED

Whether the Food Stamp Act violates the Due Process Clause of the Fifth Amendment by excluding from eligibility households that contain persons over 17 years of age who are dependents, for purposes of the federal income tax, of taxpayers not members of eligible households.

STATUTE AND REGULATION INVOLVED

Section 5(b) of the Food Stamp Act of 1964, 7 U.S.C. 2014(b), as amended by Section 4 of Pub. L. 91–671, 84 Stat. 2049–2050, provides in pertinent part:

> The Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall establish uniform national standards of eligibility for participation by households in the food stamp program and no plan of operation submitted by a State agency shall be approved unless the standards of eligibility meet those established by the Secretary. The standards established by the Secretary, at a minimum, shall prescribe the amounts of household income and other financial resources, including both liquid and nonliquid assets, to be used as criteria of eligibility. Any household which includes a member who has reached his eighteenth birthday and who is claimed as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household, shall be ineligible to participate in any food stamp program established pursuant to this chapter during the tax period such dependency is claimed and for a period of one year after expiration of such tax period. * * *

7 C.F.R. 271.3(d) provides:

> Any household which includes a member who has reached his 18th birthday and who is claimed as a dependent for Federal income tax purposes by a member of a household which is not certified as being eligible for food assistance shall be ineligible to participate in the program during the tax period such dependency is claimed and for a period of 1 year after expiration of such tax period.

STATEMENT

This action was instituted in the district court to enjoin enforcement of a 1971 amendment [1] to Section 5(b) of the Food Stamp Act of 1964, 7 U.S.C. 2014 (b), known as the "tax dependent" amendment. Under that Act, 7 U.S.C. 2011–2025, the Food and Nutrition Service of the Department of Agriculture administers a food stamp program under which, at the request of the States, low-income households are issued coupon allotments enabling them to obtain a nutritionally adequate diet at a reasonable cost to such households, with the federal government paying for the balance or bonus portion. 7 U.S.C. 2013(a), 2016(a), 2025(a); 7 C.F.R. 270.3(a). See also the declaration of policy in 7 U.S.C. 2011. The amount such a household pays towards the purchase of food stamps is determined on the basis of a sliding scale related to the household's income. 7 U.S.C. 2016(b); 7 C.F.R. 271.5.

Eligibility for food stamps is determined in all cases on a "household" basis. 7 C.F.R. 271.3(a). The 1971 tax dependent amendment declared ineligible for food

[1] Section 4 of Pub. L. 91-671, 84 Stat. 2049.

stamps "[a]ny household which includes a member who has reached his eighteenth birthday and who is claimed as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household," and the household's ineligibility under that provision exists "during the tax period such dependency is claimed and for a period of one year after expiration of such tax period." A taxpayer may claim his child as a dependent if the child receives "over half of [his] support" from the taxpayer. 26 U.S.C. 152(a). But a dependency exemption is not available for children over the age of 18 unless they are students or earn less than $650 during the taxable year. 26 U.S.C. 151(e).

Appellees alleged that, while they otherwise satisfied the eligibility requirements of the Act, they had been denied food stamps pursuant to the tax dependent amendment because one or more members of their respective households, who had reached 18 years of age, had been claimed as a dependent child by a taxpayer who did not reside in an eligible household. Appellees also contended that their households did not have adequate resources to obtain a nutritionally adequate diet and that thus the tax dependent amendment effected an "arbitrary and capricious discrimination" against them. Upon cross-motions for summary judgment, a three-judge district court held that the tax dependent amendment was invalid under the Due Process Clause of the Fifth Amendment and enjoined the government from denying food stamp eligibility on the basis of that amendment. The court, viewing the purpose of the amendment as being the

denial of food stamps to non-needy college students, concluded that the amendment was overly broad because in cases of parental desertion "there is * * * no rational relationship between denial of food stamps * * * and the resources available to or provided by the father * * *" (App. A, *infra*, p. 10), and that the amendment therefore drew an irrational distinction between otherwise equally needy households.

THE QUESTION IS SUBSTANTIAL

This appeal, like *United States Department of Agriculture* v. *Moreno*, No. 72–534, probable jurisdiction noted, December 4, 1972, presents a question of the constitutionality of a 1971 amendment to the Food Stamp Act. Here, as in *Moreno*, the district court failed properly to apply the "reasonable basis" test used by this Court in adjudicating equal protection claims under public welfare statutes.

The classification of beneficiaries in the Food Stamp Act, as in other public welfare statutes, does not offend the Constitution if it has "some 'reasonable basis'." *Dandridge* v. *Williams*, 397 U.S. 471, 485. See also *Richardson* v. *Belcher*, 404 U.S. 78; *Jefferson* v. *Hackney*, 406 U.S. 535. Under the applicable "reasonable basis" test, a statutory classification " 'will not be set aside if any state of facts reasonably may be conceived to justify it'." *Dandridge* v. *Williams*, *supra*, 397 U.S. at 485. And, "it is, of course, constitutionally irrelevant whether [the] reasoning [sustaining the statute] in fact underlay the legislative decision * * *." *Flemming* v. *Nestor*, 363 U.S. 603, 612. In *Richardson*